TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~795.~~ 226

JOHN S. FARLOW, RECEIVER OF THE CINCINNATI, SANDUSKY AND CLEVELAND RAILROAD COMPANY, APPELLANT,

vs.

SYLVANUS KELLY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

FILED MAY 21, 1880.

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1 Pleas in the circuit court of the United States for the northern district of Ohio, eastern division, held at the United States court rooms in the city of Cleveland, in the district aforesaid, before the honorable John Baxter, circuit judge for the sixth circuit, and honorable Martin Welker, district judge for the district aforesaid, on the 12th day of September, being a day of the April term of said court, in the year of our Lord one thousand eight hundred and seventy-nine, and in the one hundred and fourth year of the Independence of the United States of America.

AUGUSTUS J. RICKS, *Clerk.*

2 *Bill.*

In the circuit court of the United States for the northern district of Ohio. In equity.

To the honorable the judges of the circuit court of the United States, for the northern district of Ohio.

John C. Pratt, of the city of Boston, in the State of Massachusetts, a citizen of the State of Massachusetts, brings this his bill of complaint against the Cincinnati, Sandusky and Cleveland Railroad Company and the Sandusky City and Indiana Railroad Company, two bodies corporate, duly created under the laws of Ohio, each having its principal office and place of business in the city of Sandusky, in said northern district.

And thereupon your orator complains and says: That the said Cincinnati, Sandusky and Cleveland Railroad Company is a body corporate of the State of Ohio, duly and legally created under and by the laws of said State to build, maintain and operate a railroad from the city of Sandusky, Erie County, Ohio, to the city of Dayton, in Montgomery County, Ohio, which said body corporate was originally created under the name of the Mad River and Lake Erie Railroad Company, by act of the general*ly* assembly of the State of Ohio, entitled "An act to incorporate the Mad River and Lake Erie Railroad Company," passed January 5th, 1832, and acts amendatory thereto, "and its corporate
3 name has, since the date of said act, been duly and legally changed to the Cincinnati, Sandusky and Cleveland Railroad Company.

And your orator further says, that long prior to the first day of December, A. D. 1854, the said Cincinnati, Sandusky and Cleveland Railroad Company had constructed and completed, under its charter aforesaid, its railroad from said city of Sandusky to said city of Dayton, and had provided the same with depots, stations, rolling stock, and all other equipment necessary to run and operate the same; and prior to January 9th, 1868, had also constructed a branch road from Carey, in Wyandotte County, to Findlay, in Hancock County, Ohio.

And your orator further says, that the said Sandusky City and Indiana Railroad Company is a body corporate, duly created under the laws of Ohio, by an act of the general*ly* assembly of the State of Ohio, entitled "An act to incorporate the Sandusky City and Indiana Railroad Company, passed February 28th, 1851, and long prior to the ninth day of January, 1868, had, under its charter aforesaid, constructed and completed its railroad from said city of Sandusky to the city of Tiffin, in Seneca County, Ohio, where it connected with the railroad of said first named company, and its connection with it formed a continuous line of railroad from said city of Sandusky to the city of Dayton, in Montgomery County, Ohio, which said railroad of the Sandusky City

and Indiana Railroad Company was a shorter and more advan-
4 tageous line of road from Tiffin to Sandusky than the original line of said Mad River and Lake Erie Railroad Company between Tiffin and Sandusky.

And your orator further says that on the first day of December, A. D. 1854, in pursuance of authority conferred upon said two bodies corporate by the laws of Ohio, and especially by the charter of said Sandusky City and Indiana Railroad Company, the said last named company granted and conveyed unto the said Cincinnati, Sandusky and Cleveland Railroad Company, under the name of the Mad River and Lake Erie Railroad Company, its entire line of Railroad from Sandusky to Tiffin, with all the appurtenances thereunto belonging, and all the rents, profits, tolls, and income thereof, for the term of ninety-nine years, renewable forever, in consideration whereof the said Cincinnati, Sandusky and Cleveland Railroad Company, under its old corporate name aforesaid, covenanted and agreed to assume, and did assume all the debts, liabilities, and obligations of the said Sandusky City and Indiana Railroad Company, and to pay a semi annual dividend to the holders of the capital stock of said last named company, from which obligation the said Cincinnati, Sandusky and Cleveland Railroad Company was long since released by an exchange of the stock of said Sandusky City and Indiana Railroad Company, by the holders and owners thereof for the stock of the said Cincinnati, Sandusky and Cleveland Railroad Company.

And your orator further says that the said Cincinnati, San-
5 dusky & Cleveland Railroad Company has long since performed fully all the conditions and considerations of said lease on its part to be performed, and did assume the payment of the mortgage of the said Sandusky City and Indiana Railroad Company hereinafter mentioned, and the bonds secured thereby, which constitute the only remaining debt of said last named company, and that since the date of said lease, the said Mad River and Lake Erie Railroad Company, as well under its old as under its present corporate name, had adopted, used, and operated the said line so leased, and long prior to the ninth day of January, A. D. 1868, had made lasting and valuable improvements upon the same, and was, and for a long time had been running and operating the same as its only route or line between Tiffin and Sandusky, and having for some years prior to January 9th, 1868, ceased to use its original line between the same points which original line was at said last named date and for a long time prior thereto had been, and is now wholly unfit for use, without great expenditures, requiring much time and practically the rebuilding of it, so that for all practical purposes the said new line is the only available one between said termini.

And your orator further says that on said 9th day of January, A. D. 1868, the Cincinnati, Sandusky and Cleveland Railroad Company having become involved in debt, and being in need of money for
6 other lawful purposes and its board of directors having resolved to execute, issue, and negotiate its bonds, payable to bearer to the amount of one million one hundred thousand dollars, dated January 9th, 1868, payable on the first day of June, 1890, with interest at the rate of seven per cent. per annum, payable semi-annually, and the said board of directors having also resolved to mortgage its railroad property and franchises to secure the payment of the principal and interest of said bonds, and thereupon in performance of said resolutions of its board of directors and of authority conferred upon it by law, the said Cincinnati, Sandusky and Cleveland Railroad Company, did after-

wards, on the 9th day of January, 1868, duly execute under its corporate seal, and did duly acknowledge and deliver to your orator and William G. Lane its deed of mortgage bearing date January 9th, 1868, of which deed of mortgage the following is a true copy:

The Cincinnati, Sandusky and Cleveland Railroad Company to John C. Pratt and William G. Lane, trustees.

This indenture made and executed this ninth day of January, in the year one thousand eight hundred and sixty-eight, between the Cincinnati, Sandusky and Cleveland Railroad Company, a lawful corporation duly organized and existing under the laws of the State of Ohio, of the first part, and John C. Pratt, of the city of Boston in the commonwealth of Massachusetts, and William G. Lane, of Sandusky, in the State of Ohio, trustees and mortgagees for the trusts and purposes hereinafter declared, of the second part, witnesseth:

7 Whereas the party of the first part, in the lawful exercise of its corporate powers, and for the purpose of paying its unfunded debt and for other purposes, is about to execute and deliver its bonds to the amount of one million and one hundred thousand dollars, of the tenor and purport as follows, viz, all of said bonds are dated on the ninth of January, in the year one thousand eight hundred and sixty-eight, and are payable to the said John C. Pratt or bearer, in the city of New York, on the first day of June, in the year one thousand eight hundred and ninety, with interest thereon at the rate of seven per centum per annum, semi-annually, in the city of New York, on the first days of December and June in each year, on presentation and delivery of the interest warrants thereunto annexed. Said bonds are numbered consecutively, and vary in the amount of their principal, none being for the payment of a less sum than the sum of two hundred dollars nor for a greater sum than the sum of one thousand dollars, and are all duly countersigned by the said John C. Pratt and William G. Lane, trustees as aforesaid, and for the purpose of securing the full and principal payment of said bonds, both principal and interest, according to their tenor and effect, the said Cincinnati, Sandusky and Cleveland Railroad Company hath authorized its president and secretary to execute and deliver this deed in trust and the issuing of said bonds and the institution of this trust have been duly authorized by the vote of the stocks

8 holders of said company, holding the majority of the existing capital stock, and also by the written consent of its stockholders representing a majority of the existing capital stock of said company,

Now, therefore, this indenture witnesseth that the Cincinnati, Sandusky and Cleveland Railroad Company, in consideration of the premises, and for the better securing to the persons who shall become holders of said bonds the full and punctual payment of the same and of the interest as it shall accrue thereon, and also in consideration of one dollar paid by said parties of the second part, at and before the ensealing of these presents, and the payment of which is hereby acknowledged, doth hereby bargain, sell, enfeoff, release, grant, convey, assign, and transfer unto the said John C. Pratt and William G. Lane, and the survivor or survivors of them, and the heirs, executors, and administrators of such survivors, all and singular, the entire railroad, fixtures, equipments, and capital stock of said party of the first part; that is to say, all lands, tenements, and hereditaments of said company, all its estate, real and personal, all its rights, privileges, franchises and interests of every nature and description, including track, rights of way, cars, engines, ma-

chinery, and all its other personal property, its rents, reservations, privileges, and payments which are, or which may hereafter be, received or made payable to said company, and further, including all property, real and personal, rights and interests of every nature which said company may hereafter acquire, and the benefit of all contracts which said company hath, or may hereafter have, either in
9 law or equity, together with all tolls, issues, profits which may accrue to said company from any source whatsoever, subject to all prior liens on the same created by said company to its bondholders and holders of preferred stock under its scheme of capitalization.

To have and to hold the premises, interests, and rights which pass or are intended to pass by this conveyance unto the said John C. Pratt and William G. Lane, as joint tenants, and not as tenants in common, and to the survivor and the heirs, executors, administrators, and assigns of such survivors, to their own proper use and behoof forever.

In trust, nevertheless, for the persons or corporations, and for the benefit and protection and security of the persons or the corporations who shall hold the bonds about to be issued by the party of the first part, and for enforcing the stipulations of said company in this behalf, in their true intent and meaning, whether contained in said bonds or interest warrants, or in this deed. And for the better assuring and conferring the title, interest and powers of the grantees of this deed, especially in relation to such property and rights hereafter occurring, or acquired by said company, and intended to pass by this conveyance, the said party of the first part hereby covenants with said party of the second part, and with the survivor, and with the heirs, executors, administrators, and assigns of said survivor, that at any time hereafter, and as often as may be required by the person or persons holding the above-granted estate in trust, the said company will do such
10 acts, and make such further assurances in the law as such trustee or trustees shall be reasonably advised as necessary, or as tending to the better carrying out the objects of the parties to this mortgage.

In case default be made by said company in payment of any money, either principal or interest, secured by this mortgage the said party of the first part hereby covenants and agrees with the said grantees that within six months after such default shall have been made the same default still continuing, the said company on demand of the trustee or trustees for the time being shall surrender to them, or to their agent, the actual possession of the herein granted and demised premises, the expense of taking, holding, and managing said property, if possession be taken to be paid from the income, and, if necessary, from the sale of such personal property as the trustees deem proper.

And the said party of the first part in case of default by said company to make payment of any sum of money, either principal or interest, secured by this mortgage, for the period of one year after the same shall become due doth hereby authorize any lawful attorney-at-law to enter the appearance of said company without process in any court of competent jurisdiction to any bill or petition filed by the trustees of said trust for the foreclosure and sale of the premises by this deed granted and conveyed, and if requested by said trustees to consent, on behalf of said company, that a receiver be forthwith appointed by said court to take possession of said road and of all the property, real
11 and personal, hereby conveyed, and of all the effects, books, business, and papers of said company upon such terms as said court shall prescribe; and further to consent, said default still continuing

that a decree or order forthwith pass in said case for the sale of the premises hereby granted and assigned, without appraisement, but under the direction of the court, and to enter of record in behalf of said company a stipulation not to appeal from said decree, and not to impede the execution thereof by an application for rehearing, or by bill or petition of receiver, or by any other steps to produce delay.

And it is further agreed by the party of the first part that in case the said company for the term of one year shall make default of payment of its interest warrants, or any of them, then the whole principal monies contained in the said bonds shall become due and payable, and the proceeds of sale shall be applied first to paying to said trustees all their lawful charges, and to indemnify them from all liability as trustees; secondly, to the holders of said bonds, in full and equal proportions the principal and interest of said bonds, and, lastly, to paying the surplus, if any, to the stockholders of said company.

And it is hereby mutually agreed by the parties to these presents that the said trustees, their successors, and assigns, shall not be answerable for the acts, omissions, and defaults of each other, and that each shall be responsible for gross negligence, and willful default only.

12 And the said company agree that the said trustees may employ or advise with legal counsel, and that the expenses thereof, and all other reasonable and proper charges and expenses of said trustees, or either of them, including a reasonable compensation for their services and responsibilities, shall be paid to them by said company, as often as required; and it is hereby further declared and agreed that neither the present nor any future trustees of this trust shall be bound to take any steps touching the execution of this trust which, in their opinion, is likely to involve them in expenses or personal liability, unless the bondholders, or some one or more of them, as often as the trustees shall deem necessary, shall give to said trustees, and each of them, reasonable security to indemnify them against such expenses and personal responsibility, anything hereinabove contained notwithstanding.

And it is hereby further declared and agreed that in all cases in which the trustees of this trust may be required to act, they are hereby invested with full power of arbitrament and of compromise, and of appointing agents, or otherwise, to act in their behalf, except only and provided that the proper act and signature of all the trustees for the time being of this trust shall be necessary to discharge and acknowledge satisfaction of this mortgage, or to release the premises, or any of them, from its operation. And whenever and as often as any trustee of this trust shall die or become incapable of act-

13 ing, or shall signify to the other trustee in writing his wish to be discharged from the same, then the other trustee shall fill the vacancy thus existing by appointing a trustee in his stead; and such trustee shall be appointed in writing by the president of said company, and by the holders of not less than one-tenth of the amount of said bonds; and upon such appointment and ratification the proper conveyance shall be made by all the necessary parties to invest the person so appointed with the full estate and powers, rights, duties, and obligations of the present trustees, and subject to the provisions and stipulations of this indenture; and it is hereby declared that all the trusts, powers, provisions, stipulations, and conditions of this indenture shall attach to and be executed by whomsoever shall become trustee, in the same manner as by the original trustee.

And it is further agreed by the party of the first part that at any

time before the maturity of the principal of said bonds the holders of the same, or any of them, shall be entitled to convert the principal sum into the capital stock at par, on surrendering the same, with the interest warrants not then due annexed, provided, however, nevertheless, that if the said party of the first part, their successors, or assignees, shall well and truly pay to the holders of said bonds, the several and respective sums of money and interest due and accruing on the day, and according to the condition therein expressed, without deduction
14 or abatement for charges, then, and thenceforth, this indenture, and the estate hereby granted, shall become void.

In witness whereof the said party of the first part to these presents hath set its corporate seal, and the president and secretary of said company, duly authorized by resolution of said company, have subscribed their names, on the day and year aforesaid.

[SEAL.] THE CINCINNATI, SANDUSKY AND CLEVELAND RAILROAD COMPANY,

By RUSH R. SLOANE, *President*,
S. H. LATHAM, *Secretary*.

Sealed, signed, and delivered in presence of—
J. T. RANDOLPH.
ELUHA M. COLOER.

JOHN C. PRATT. [SEAL.]
WILLIAM G. LANE. [SEAL.]

Signed, sealed, and delivered in presence of—
W. H. BRONISON.
F. A. COGSWELL.

THE STATE OF OHIO,
Erie County, ss:

Be it remembered that on this ninth day of January, A. D. 1868, came the Cincinnati, Sandusky and Cleveland Railroad Company, by its president and secretary aforesaid, and acknowledged the foregoing conveyance to be its act and deed, for the uses and purposes therein expressed. In testimony whereof I have hereunto set my hand and official seal on the day and year aforesaid.

[NOTARIAL SEAL.] E. M. COLOER,
Notary Public.

15 STATE OF OHIO,
Erie County ss:

Be it remembered that on this 11th day of January, A. D. 1868, before me, Frederick W. Cogswell, a notary public within and for said county, personally appeared John C. Pratt and William G. Lane, the persons named in the within deed, and then and there duly acknowledged the same to be their act and deed, for the purposes therein expressed.

[SEAL.] FREDERICK W. COGSWELL,
Notary Public.

And your orator further says that since the execution and delivery of said deed of trust or mortgage to your orator, William G. Lane, as aforesaid, the Columbus, Springfield and Cincinnati Railroad Company, a body corporate duly created under the laws of Ohio, under the authority and in pursuance of the statutes of Ohio, leased its rail-

road, extending from Columbus, in Franklin County, Ohio, to Springfield, in Clark County, Ohio, which, by reason of a lease heretofore made by said Cincinnati, Sandusky and Cleveland Railroad Company of that portion of its road between Springfield and Dayton to the Springfield and Cincinnati Railroad Company, is the southern terminus of the operated line of said Cincinnati, Sandusky and Cleveland Railroad Company, for the term of ninety-nine years, renewable forever, to the said last named company, who, ever since the first day of
16 March, 1872, has run and operated the said railroad from Columbus to Springfield, and is now engaged in running and operating the same under the said lease, the said Cincinnati, Sandusky and Cleveland Railroad Company paying, as the rental thereof, forty per cent. (40%) of the gross earnings thereof.

And your orator further says that the said roads of the two last-named companies form a continuous line of railroad from Sandusky to Columbus, and that, as your orator is informed and believes, the said lease is valuable and essential to the line of road of the Cincinnati, Sandusky and Cleveland Railroad Company, and should continue to be operated in connection therewith, and that the said leasehold estate of said last-named company, under said lease, is covered by the said mortgage to your orator and William G. Lane.

And your orator further says that shortly after the execution and delivery of said deed and mortgage, the said trust was duly accepted by your orator and William G. Lane, and the said mortgage was duly left for record with the recorder of deeds of the several counties through which said line of railroad passes, and was, prior to the (1st) first day May, 1868, duly recorded in each of said counties.

And your orator further says that shortly after the execution and delivery of said deed of mortgage, the said Cincinnati, Sandusky and Cleveland Railroad Company issued and negotiated, in accordance with the terms of said mortgage, a large amount of said bonds, and
17 has from time to time since issued and negotiated others of said bonds, until it had issued and negotiated, in pursuance of the terms of said mortgage, the full amount of one million one hundred thousand dollars of said bonds, which are now all outstanding and unpaid, and of the interest which matured June 1st, 1873, fifteen thousand dollars thereof are unpaid, whereof the said Cincinnati, Sandusky and Cleveland Railroad Company has made default in the condition of said mortgage, and the same has become liable to be foreclosed.

And your orator further says that prior to the lease of the said Sandusky City and Indiana Railroad to the Cincinnati, Sandusky and Cleveland Railroad Company, hereinbefore stated, the said Sandusky City and Indiana Railroad Company executed, acknowledged, and delivered to Samuel Henshaw and Henry Feramins, of the city of Boston, in the State of Massachusetts, and Ebenezer Sane, of the said city of Sandusky, all of whom are now deceased, a mortgage or trust deed upon its railroad from Sandusky to Tiffin, to secure three hundred and fifty thousand dollars of bonds, which said mortgage was duly recorded in the counties through which the said railroad extends, and the whole of said bonds were duly issued and are outstanding and unpaid, and that there is due thereon the sum of three hundred and fifty thousand dollars, with interest from the first day of March, 1877, which said mortgage
18 your orator admits to be the first lien upon that portion of the railroad of the said Cincinnati, Sandusky and Cleveland Railroad Company which lies between Sandusky and Tiffin, being the line of rail-

road built and originally owned by said Sandusky City and Indiana Railroad Company, as aforesaid.

And your orator further says that on the first day of February, 1851, the said Cincinnati, Sandusky and Cleveland Railroad Company executed and acknowledged a deed of trust, a mortgage upon its entire line of railroad, rolling stock, and other equipment, to Samuel Hensbaw, of the said city of Boston, and David A. Neal of the city of Salem, in said State of Massachusetts, to secure the payment of one million dollars of its bonds, which said bonds were duly issued and negotiated under said mortgage to the amount of nine hundred and ninety-seven thousand dollars, and are outstanding and unpaid; and your orator admits that they lien of said mortgage is prior to the lien of the said mortgage to your orator and William G. Lane, hereinbefore ment oned.

And your orator further says that on the 27th day of April, A. D. 1877, the said William G. Lane, being in ill health, and unable to attend to the duties of said trust, duly resigned the same in writing, in accordance with the terms of said mortgage, whereby your orator became and is the sole and only trustee therein.

And your orator further says that one Rush R. Sloane, formerly president of the said Cincinnati, Sandusky and Cleveland Railroad
19 Company, was guilty of embezzling large amounts of the moneys of said railroad company, and of otherwise fraudulently appropriating its property to his own use, and being detected therein was, in October, 1873, by a unanimous vote of the stockholders of said railroad company, expelled from his office as president and director of said company, and was thereafter by said company prosecuted, in civil action, for the recovery of the money and property so fraudulently appropriated by him, which said claims he settled May 1st, 1874, by paying and securing to be paid the sum of two hundred and fifty thousand dollars, and was also indicted for felonious crimes committed by him in connection with his said embezzlements and frauds, and fled from justice to foreign countries, and remaining there some three years, and has returned to this country and procured the said indictments to be nollied, and has obtained, by fraud and force, possession of the railroad and property of the said Cincinnati, Sandusky and Cleveland Railroad Company, and is now in possession of the same, and is acting as general manager of said railroad and property, and has hitherto successfully resisted the attempt of the proper officers of said railroad company to regain possession of its property; and said possession of said property by said Rush R. Sloane and his confederates has given rise to serious litigation in regard to said property, which still continues, and has damaged its business, impaired the credit of said company, and that
20 said property is rapidly deteriorating in value, and is in great and imminent danger of being wasted and destroyed, and its revenues seriously impaired, whereby the value of said mortgaged estate is in imminent danger of becoming so far impaired as to destroy the security of the beneficiaries of your orator under said mortgage.

And your orator further says that in the year 1865, under and by virtue of an agreement between the said Cincinnati, Sandusky and Cleveland Railroad Company and its mortgage and other creditors, its affairs were adjusted and capitalized; and in and by said agreement of capitalization it was provided that the holders of the bonds of said railroad company secured by its mortgage dated February first (1st), A. D. 1855, and which was duly recorded long prior to the execution of the mortgage to your orator and William G. Lane aforesaid, should surrender their said bonds and receive in lieu thereof forty per centum of the

amount due thereon in the preferred stock of said company, bearing interest at the rate of six per cent. per annum, payable semi-annually, on the first days of May and November of each year, upon the condition that the said bonds should be deposited in the Revere Bank of Boston, Mass., and should become revived and be delivered back to the holders of said preferred stock, and that said mortgage should remain uncanceled; and under the terms of said agreement the bonds secured by the mortgage last aforesaid, which, at the time of the said agree-
21 ment of capitalization, amounted to one million dollars of principal, and a large amount of past due interest, the precise amount of which your orator cannot state, were lodged in the Revere Bank of Boston, and four hundred thousand dollars of the preferred stock of said railroad company was issued and delivered to the holders thereof, respectively, under said agreement of capitalization, and said bonds now remain in said Revere Bank of Boston under said agreement; and in the event that default be made in the payment of interest upon said preferred stock the said bonds will become revived, and the debts of said company will be increased by more than six hundred thousand dollars, which said increase of indebtedness will become a lien upon the entire property of said road, prior to the lien of the mortgage to your orator and William G. Lane aforesaid, and will impair and destroy the value of the security of the beneficiaries under said mortgage.

And your orator further says that there is about seventy thousand dollars of the past due interest on the bonds issued under the mortgage dated February 1st, 1851, hereinbefore mentioned, the precise amount of which your orator cannot now state, and that under the scheme of capitalization aforesaid the holders of the bonds under this mortgage conditionally surrendered and lodged in said Revere Bank unpaid interest coupons of said bonds which had matured prior to said capitalization scheme for the period of six years, which amount in the ag-
22 gregate to four hundred and thirty thousand dollars, which said coupons are liable to become revived against said company, and the amount due thereon become a lien upon said railroad prior to that of the mortgage to your orator and William G. Lane aforesaid if further default be made in the interest maturing under said mortgage.

And your orator further says that by reason of the wrongful and forcible possession of the said railroad by the said Rush R. Sloane and his confederates as aforesaid, some of whom claim to be stockholders in said corporation, and the exclusion of the board of directors and other proper officers of said company from the possession of its resources, and the management of its affairs, and the litigations, controversies, and complications which have already arisen, and the further controversies which are liable hereafter to arise, the property of said company is rapidly deteriorating in value, its business becoming greatly deranged, its revenues wasted, and, if the same be allowed to continue, the said railroad company will become insolvent, and a large amount of additional liabilities will accrue against said company under the terms of said capitalization scheme as hereinbefore recited, and the security of the holders of the bonds under the mortgage issued to your orator and William G. Lane aforesaid will become wholly lost and destroyed.

And your orator further says that the track of said railroad company is in need of repair; and prior to the unlawful disturbance of its
23 possession, as aforesaid, it had, for the purpose of repairs, distributed large quantities of ties along its road, had contracted for 1,000 tons of steel rails, and other large quantities of material to be presently delivered for this purpose; which said repairs and the per-

formance of said contracts are interrupted and suspended by the wrongs aforesaid. That a large number of the officers and employees of said railroad company whose services are necessary to the operation of its road have been excluded by the said Rush R. Sloane and his confederates, and prevented from discharging their duties to said company and to said property, whereby large sums of money, by way of salaries and wages, are accumulating against said company without its receiving any benefit therefor; that large sums of money belonging to said company are in the hands of banks, express companies, and station agents, and other railroad companies, and other large sums of money are due to said company from the lessee of that portion of its road which lies between Springfield and Dayton; from the Government of the United States for mail service, and from other contractors with it; which said several sums of money the said railroad company is prevented from collecting and controlling by reason of the unlawful possession of its railroad and property by said Rush R. Sloane and his confederates; that a number of suits are pending, brought by said company, to collect claims due it under insurance policies, which require immediate
24 prosecution, and the prosecution of which is prevented by the exclusion of said company from its books and papers. That the business of said company is large and remunerative, its agents, employees, and servants numerous; that it is possessed of a large amount of personal property, liable to deterioration if improperly handled; that its agents, servants, and employees to whom money is due for labor and services rendered to said company in the operation of its road are not being paid, and the said company is thereby rendered liable to have brought upon it great expense and numerous suits, and the character of said Rush R. Sloane for dishonesty is so notorious throughout the United States, that unless the continuance of said wrongs be immediately prevented the credit of said company will be wholly destroyed, which credit, prior to said unlawful disturbance of its possession, had been by the careful management of its officers kept good in all parts of the United States where its business extended, and the affairs and business of said corporation become so embarrassed and involved as that it will become impracticable successfully to carry on the same.

And your orator further says: That the said railroad extends through a large number of counties of said State, and it has personal property to a large amount in each of said counties; and that it is impracticable for said railroad company to dispossess said Rush R. Sloane and his confederates of said railroad and personal property by actions at
25 law, and that neither said railroad company nor your orator has any adequate remedy at law against the said Rush R. Sloane and his confederates, and unless a receiver be appointed in a court of equity to take immediate charge and possession of said property, the delays incident to *to* proceedings at law will render said property in imminent danger of being so far wasted as seriously to impair, if not wholly to destroy the value of the security of your orator's beneficiaries under said mortgage of January 9th, 1868, made to your orator and William G. Lane, as aforesaid, and your orator says that it is the avowed purpose and object of the said Rush R. Sloane in seeking, assuming, and retaining the possession and control of said railroad and its property to run down and depreciate the value of its securities, so as to enable him and his confederates to purchase the same at nominal prices, and thereby acquire permanent control of said property.

Wherefore, and forasmuch as there is no adequate remedy at law in the premises, your orator prays that the said Cincinnati, Sandusky and

Cleveland Railroad Company and the Sandusky City and Indiana Railroad Company may be made parties defendant hereto, and may be required to answer all and singular the matters and things hereinbefore set forth; that on the first hearing hereof the amount of unpaid interest due and to become due pending this suit, upon the bonds issued and outstanding under the mortgage made to your orator, as aforesaid, together with the amount of the principal of said bonds may be
26 ascertained, and that the said railroad and its appurtenances, together with its franchises and other property covered by said mortgage may be decreed to be sold subject to the prior incumbrances thereon, and that the proceeds of such sale, together with the income and profits arising from the operation of said railroads by any receiver appointed herein, after discharging all the necessary costs and expenses thereof, and the past due interest upon prior incumbrances and other just charges, may be applied in satisfaction of the amount found to be due upon the bonds and coupons thereof, issued and outstanding under the said mortgage to your orator, and that pending this suit a receiver may be appointed of all and singular the said railroad of the Cincinnati, Sandusky and Cleveland Railroad Company and its branch and leased lines, with its appurtenances and franchises and rolling stock or equipment, and of the income and earnings thereof, and of all other the said mortgage premises and properties, rights and interests, with such orders and directions in respect to such receivership and the fruits thereof as shall be equitable and proper, and that writs of assistance shall be issued and such orders may be made as may be necessary to aid the receiver to be appointed in acquiring and retaining possession of said railroad and property, and that your orator may have such further or such other order, relief, and decree in the premises as may be agreeable to equity, and as to your honors shall seem meet.

27 And may it please your honors to grant unto your orator writs of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to the said Cincinnati, Sandusky and Cleveland Railroad Company and the said Sandusky City and Indiana Railroad Company, defendants, commanding each of them on a day certain therein to be named, and under a certain penalty, to be and appear in this honorable court, then and there to answer all and singular the premises, and to stand to, perform, and abide such further order, direction, and decree as may be made against them.

And your orator will ever pray, &c.

R. P. RANNY AND
S. A. BOWMAN,
Solicitors and Counsel for Complainant.

UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

John C. Pratt, being duly sworn, deposeth and saith that he is the complainant in the foregoing bill named, and has read the same, and knows the contents thereof; that the said bill is true of his own knowledge, except as to those matters which are therein stated to be on his information and belief, and as to those he believes it to be true.

JOHN C. PRATT.

Sworn to before me this 1st day of April, A. D. 1877.

CHAS. H. BILL,
U. S. Commissioner, N. D. O.

Filed May 1st, 1877.

28 THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

The President of the United States of America to the Marshal of the northern district of Ohio, greeting:

You are hereby commanded to summon the Cincinnati, Sandusky and Cleveland Railroad Company, and the Sandusky City and Indiana Railroad Company, if they be found in your district, to be and appear in the circuit court of the United Sates, within and for the district aforesaid, at Cleveland, on the first Monday in June, next, to answer a certain bill in chancery filed and exhibited in said court against them by John C. Pratt.

Hereof they are not to fail, under the penalty of the law, thence ensuing, and have you then and there this writ.

Witness, the honorable Morrison R. Waite, Chief Justice of the United States, this 1st day of May, A. D. 1877, and the 101st year of the Independence of the United States of America.

EARL BILL, *Clerk.*
By CHAS. H. BILL, *Deputy Clerk.*

MEMORANDUM.—The said defendants are required to enter their appearance in this suit, in the clerk's office of said court, on or before the first Monday of June, 1877, otherwise the said bill may be taken pro confesso.

EARL BILL, *Clerk.*

NORTHERN DISTRICT OF OHIO:

On the 1st day of May, 1876, I delivered a true and duly certified copy of this writ to John S. Farlow, president of the within named Cincinnati, Sandusky and Cleveland Railroad Company, at Cleveland, Ohio. I also the same day delivered a true and duly certified copy of this writ to John S. Farlow, president of the within named Sandusky City and Indiana Railroad Company, at Cleveland, Ohio.

N. B. PRENTICE,
U. S. Marshal.

(Indorsed:) No. 3353. United States circuit court, northern district of Ohio. In chancery. John C. Pratt vs. C. S. and C. R. R. Co. et al. Subpœna. Returnable June 4th, 1877. Rule day for appearance, June 4th, 1877. Rule day for answer, July 2nd, 1877. Returned and filed May 1st, 1877. Chas. H. Bill, deputy clerk. R. J. Ranney, S. A. Bowman, complainant's solicitor.

29 And afterwards, to wit, at the April term, A. D. 1877, on the 15th day of May, being a day of said term, the following order was entered in this cause, viz:

(Journal 8, page 457.) This day came the parties by their respective counsel, and thereupon this cause came on to be heard upon the motion of complainants for the appointment of a receiver, and the court being sufficiently advised in the premises, it is ordered and decided by the court that John S. Farlow be, and he is hereby, appointed receiver of the railroad, real and personal property, and franchises described in said complaint; that is to say, of the main line of the railroad of the said Cincinnati, Sandusky, and Cleveland Railroad Company, extending from a point in the city of Dayton, in the State of Ohio, to a point in the city of Sandusky, Erie county, Ohio, together with the leased lines and branches thereunto appertaining and belonging, together with all the real

estate and personal property of every kind and description, including rolling stock, supplies, all books of account, papers, monies, bills receivable, rents, profits, and income of the premises accrued, accruing, and to accrue, as well as of all rights and easements, privileges, and franchises of the said corporation so far as may be needful and proper, for the said receiver to have passes, and exercise such franchises for the proper and efficient performance of the duties imposed upon him and by law.

It is further ordered that the said receiver, upon the filing of the bond hereinafter required to be filed by him, conditioned for the faithful performance of his duties in the premises, do forthwith, as such
30 receiver, take and hold possession of all and singular the property, real and personal, choses in action, books and papers, rights, privileges, easements and franchises aforesaid, subbject to the further order and direction of this court from time to time in the premises.

It is further ordered that all and singular every person and corporation, and the servants and agents of every person and corporation, now having or claiming to have possession of or rights in the premises, or property embraced in this order or any portion or part thereof, be, and they severally are, commanded and enjoined to surrender possession thereof to said receiver, attorn to him, and to obey and respect his authority in the premises according to the full and true tenor, intent, and meaning of this order, under the pains and penalties attaching by law to disobedience.

It is further ordered that the said receiver be, and he is hereby, authorized to run and operate the entire line of railroad and its leased lines and branches, and appurtenances aforesaid; to keep the same, with its equipment, in repair; to make such additions as may be required from time to time; to keep up to proper standard of capacity and efficiency the means of transportation on the said road; to purchase and pay out of the rents and profits thereof, from time to time; for all supplies necessary for this purpose; to employ and pay and dismiss all needful agents and servants; pay all lawful taxes and assessments on the premises; to protect and preserve all franchises touching the premises; to institute
31 and defend suits and proceedings necessary to a proper discharge of his duties in the premises, and to that end to employ such solicitors, attorneys, and counsel as from time to time he may deem necessary and proper, and generally to do all acts and things proper and necessary to be done to protect property, franchises, and rights of which he is hereby appointed receiver, and needful to promote the business and increase the earnings of said railroad, branch, and leased roads, and other property described in the bill of complaint in this cause; and to pay, compromise, and adjust all claims for injury, loss, and damage to property and persons growing out of the operation of the said road as aforesaid, with leave to apply from time to time for such instructions in the premises touching his rights and liabilities as he may be advised.

It is further ordered that the said receiver keep full, true, particular, and accurate accounts of his earnings, receipts, and expenditures in the premises; and that he render and file with the clerk of this court an account thereof once in every three months during the period of his receivership, and oftener if so required by the further order of this court, and that said receiver hold and safely keep all the rents, revenues, and income of said property over and above the expenditures and disbursements hereby authorized, subject to such order as this court may, from time to time, make in the premises.

It is further ordered that as soon as practicable after taking possession of the property embraced in this order, the said receiver cause an inventory to be made of all engines, cars, tenders, rolling stock, equipment, material, supplies, and other personal property, of which
32 he is hereby appointed receiver, stating its kind, quantity, and amount and situation, and that he make oath to the same and file a copy thereof with the clerk of this court.

And it is further ordered that the said receiver pay from and out of the said earnings and income all sums of money due and owing to agents, servants, and laborers now or heretofore employed in and about the operation, care, and management of the said railroad premises for wages earned within six months prior to the entry of this order, and that the said receiver likewise pay from and out of such earnings and income all sums of money due and owing for supplies purchased within six months from and prior to the date of this order for use upon the said road, and the just and reasonable expenses incurred in and about his appointment as receiver.

It is further ordered that the said receiver have leave without further application to this court to institute and prosecute all such actions as he may be advised it is necessary and proper for him to institute and prosecute in the due performance of the duties thereby imposed upon him, or which may be already instituted either by or against said railroad company, subject, however, to such directions as the court on application may, from time to time, make on this behalf, and for that purpose the said receiver has leave to use the name of the said Cincinnati, Sandusky and Cleveland Railroad Company as advised.

It is further ordered that the said receiver, before entering upon
33 the discharge of his duties, take the oath prescribed by law, and enter into an undertaking with one or more sureties approved by the clerk of this court to the complainants in the sum of one hundred thousand dollars, to the effect that he will faithfully execute the duties of receiver in this action and obey the orders of the court herein, and upon the approval of said bond, that said receiver forthwith proceed to take possession of said railroad and property and enter upon the duties of his said trust.

And thereupon came John S. Farlow in open court and accepted such appointment and presented his bond as such receiver, with sureties duly approved by the clerk of this court, and which was ordered to be filed, and also in open court took the oath prescribed by law as such receiver.

And afterwards, to wit, on the 16th day of September, A. D. 1878, while the cause aforesaid was still depending in said court, and the order appointing receiver aforesaid was still in force, the following motion was filed in the suit aforesaid:

34 *Motion of Sylvanus Kelly for leave to bring suit against the receiver.*

United States court, northern district of Ohio. In chancery.

JOHN C. PLATT ET AL.
vs.
THE CINCINNATI, SANDUSKY & CLEVELAND R. R. Co. et al.

Sylvanus Kelly, of the county of Sandusky, and State of Ohio, moves the court for leave to commence a civil action in the court of common pleas

of said Sandusky County, through which said railroad passes, against John S. Farlow, as receiver of the said railroad company appointed by this court in the above entitled cause, for the following causes of action: That on the 23rd day of August, A. D. 1877, said Kelly was a passenger on one of the trains and cars of the said receiver, going from the city of Springfield, Ohio, to Clyde, in said Sandusky County, having paid the agent of said receiver for his passage; that said receiver, by his agents and servants, so carelessly, negligently, and unskilfully and improperly placed a freight car and permitted the same to remain on a side track to the main track of said railroad near the station of said railroad, in the town Bellefountaine, Ohio, and so near the main track where said side track connects with the main track, that in consequence thereof and of the carelessness, negligence, and unskilfulness of the said receiver, by his agents and servants having charge and control of the train and cars on which said Kelly was a passenger as aforesaid, in not observing that said freight car was so near said main track that said passenger train would strike the said freight car in passing, and in not checking up
35 and stopping said passenger train before reaching said freight car, which with proper care and diligence might and ought to have been done, after coming in sight of said freight car, and in carelessly and negligently running said passenger train into said station at Bellefountaine and by said freight car at too great speed, and at greater speed than was prudent and lawful at or near said station, that said train and the car on which said Kelly was a passenger as aforesaid, coming from Springfield, ran with great speed and violence into and against said freight car, whereby the concussion and shock was so great and violent *was so great* that said Kelly's right arm, without any fault or negligence on his part, was knocked and forced out of the window of the car on which he was a passenger, and so broken and crushed by the collision of said passenger car with and against said freight car that it became necessary to amputate his arm above the elbow in order to save his life, by reason whereof said Kelly has lost his right arm and suffered great pain and risk of his life, and incurred great expense in medicine and medical attendance and other attendance and expenses, and in the permanent loss of his right arm and wages per his labor, and other injuries then and there inflicted by said collision on the said Kelly, to his damage in the sum of $15,000 $\frac{00}{100}$, which said receiver refuses to pay to said Kelly, although often requested to pay the same.

R. P. AND H. S. BUCKLAND &
BARTLETT AND FINNEFROCK,
Attorneys for Sylvanus Kelly.

The said John S. Farlow will take notice that said Sylvanus Kelly will make the said motion to said circuit court at Cleveland, Ohio,
36 on Monday the 16th instant, at 11 o'clock, a. m., or as soon thereafter as counsel can be heard by said court for that purpose.

R. P. AND H. S. BUCKLAND &
BARTLETT & FINNEFROCK,
Att'ys for Kelly.

Service by copy acknowledged this Sept. 11th, 1878.

JOHN M. LEAMON,
Attorney for Defendant.

Order.

And afterwards, to wit, on the 3rd day of October, 1878, at the Octo

ber term, 1878, of said court, the following order was entered in this cause, viz:

In this cause it is ordered that the petition of Sylvanus Kelly herein filed, asking for an order of this court to bring a suit against the receiver of defendant railroad for $15,000 in the court of common pleas of Seneca County, Ohio, be disallowed.

Motion of Kelly for leave to file complaint against receiver.

United States circuit court, northern district of Ohio. In chancery.

JOHN C. PLATT ET AL.
vs.
CINCINNATI, SANDUSKY AND CLEVELAND R. R. Co. et al.

Sylvanus Kelly, of the county of Sandusky and State of Ohio, moves the court for leave to file his complaint in the above entitled cause against John S. Farlow as receiver of the said R. R. company appointed by said court in said cause, for the following causes of complaint: That on the 23rd day of August, A. D. 1877, said Kelly was a passenger upon one of the trains and cars of the said receiver, going from the city of
37 Springfield, Ohio, to Clyde, in said Sandusky County, having paid the agent of said receiver for his passage; that said receiver, by his agents and servants, so carelessly, negligently, and unskilfully and improperly placed a freight car and permitted the same to remain on a side track to the main track of said railroad, near the station of said railroad in the town of Bellefountain, Ohio, and so near the main track where said side track connects with the main track, that in consequence thereof, and of the carelessness, negligence, and unskilfulness of the said receiver by his agents and servants having charge and control of the trains and cars on which said Kelly was a passenger as aforesaid, in not observing that said freight car was so near said main track that said passenger train would strike the said freight car in passing, and in not checking up and stopping said passenger train before reaching said freight car, which with proper care and diligence might and ought to have been done after coming in sight of said freight car, and in carelessly and negligently running said passenger train into said station at Bellefountaine, and by said freight car at too great speed and at greater speed than was prudent and lawful at or near said station, that said train and the car on which said Kelly was a passenger as aforesaid, coming from Springfield, ran with great speed and violence into and against said freight car, whereby the concussion and shock was so great and violent that said Kelly's right arm, without any fault or negligence on his part, was knocked and forced out of the window of the car on which he was a passenger, and so broken and crushed by the collision of said passenger car with and against said freight car that it became necessary to amputate his arm above the elbow in order to save his life, by reason whereof said
38 Kelly has lost his right arm and suffered great pain and risk of his life and incurred great expense in medicine and medical attendance and other attendance and expenses, and in the permanent loss of his right arm and wages for his labor and other expenses then and there inflicted by said collision on the said Kelly, to his damage in the sum of $15,000.00, which said receiver refuses to pay to said Kelly, although often requested to pay the same.

R. P. & H. S. BUCKLAND AND
BARTLETT AND FINNEFROCK,
Att'ys for Sylvanus Kelly.

The said John S. Farlow, receiver, will take notice that said Sylvanus Kelly will make the said motion to said circuit court at Cleveland, Ohio, on Wed., the 13th inst., at 11 o'clock a. m., or as soon thereafter as counsel can be heard by said court for that purpose.

R. P. & H. S. BUCKLAND AND
BARTLETT AND FINNEFROCK,
Att'ys for Kelly.

Service by copy acknowledged this 9th day of Nov., A. D. 1878.

JOHN M. LEAMON,
Att'y for Def't.

The said Sylvanus Kelly, being first duly sworn, deposes and says that the several matters and things set forth in the foregoing motion are, according to the best of his knowledge, information and belief true in substance and in fact.

S. KELLY.

Subscribed in my presence and sworn to before me this 12th day of Nov., A. D. 1878.

JOHN S. GREENE,
U. S. Commissioner.

39 *Motion allowed.*

And afterwards, to wit, on the 13th day of Nov., 1878, being a day of the October term, 1878, of said court, the following order was made in this cause:

On application of Sylvanus Kelly by his counsel, it is ordered that said Sylvanus Kelly have leave to file in this case his complaint and petition against John S. Farlow, receiver of the said Cincinnati, Sandusky and Cleveland R. R. Company. It is further ordered that a notice issue from the clerk of this court to said Farlow, notifying him to appear and make defence to the complaint of said Sylvanus Kelly, and that he appear and make his defence to said complaint within thirty days from this date.

Complaint of Sylvanus Kelly against John S. Farlow, receiver.

In the United States of America, northern district of Ohio. In the circuit court, in chancery.

JOHN C. PLATT ET AL.
vs.
THE CINCINNATI, SANDUSKY & CLEVELAND R. R. Company et al.

Sylvanus Kelly, of Sandusky County, and State of Ohio, by leave of said court, first had and obtained, complains of John S. Farlow, receiver of said Cincinnati, Sandusky and Cleveland R. R. Company, and states: That on the 18th day of May, A. D. 1877, by the decision and order of said court, the said John S. Farlow was duly appointed receiver of said railroad company and of the franchises and prop-
40 erty described in the bill of complaint in said cause, to wit, of the main line of the R. R. of said company, extending from a point in the city of Dayton, Ohio, to a point in the city of Sandusky,

Erie County, Ohio, together with the leased lines and branches thereunto appertaining and belonging, together with all the real estate and personal property of every kind and description, including rolling-stock, supplies, and books of account, papers, monies, bills receivable, rents, profits, and income of the premises, accrued and accruing and to accrue, as well as of all rights and easements, privileges, and franchises of the siad corporation, so far as may be useful and proper for the said receiver to have, possess, and exercise such franchises for the purpose of the proper performance of the duties imposed upon him and by law. That on said 15th day of May, A. D. 1877, the said John S. Farlow duly qualified and accepted said appointment of receiver, and immediately thereafter proceeded to and did take possession of all and singular the said railroad property and franchises, and assumed the duties and obligations of such receiver under and by virtue of said appointment, and is still in the possession of the same, and has continuously since that time controlled and operated, and still controls and operates said railroad, rolling-stock, franchises, and property as such receiver, for the purpose of the transportation of passengers and freight upon and over said line of railroad as a common carrier. That on the 23rd day of August, A. D. 1877, the said Sylvanus Kelley was a passenger on one of the trains and cars of the said receiver going from the city of Springfield, in Clark County, to Clyde, in Sandusky County, Ohio, having paid the agent of said receiver for his, said Kelly's, passage; that said receiver by his agents and servants so carelessly, negligently, and unskillfully,
41 and improperly placed a freight car, and permitted the same to remain on a side track to the main track of said railroad, near the station of said railroad, in the town of Bellefountaine, Logan County, Ohio, and so near the main track, that in consequence thereof, and of the carelessness, negligence and unskillfulness of the said receiver by his agents and servants having charge and control of the train and car on which said Kelly was a passenger as aforesaid, in not observing that said freight car was so near said main track that said passenger train would strike said freight car in passing, and in not checking up and stopping said passenger trains before reaching said freight car, which with proper care and diligence might and ought to have been done after coming in sight of said freight car, and in carelessly and negligently running said passenger train into said station at Bellefountaine and by said freight car at *two* great speed and at a greater speed than was prudent, safe, or lawful at or near said station, which said side track and freight car were within the corporate limits of said town of Bellefountaine; that said train and the car on which said Kelly was a passenger as aforesaid, coming from Springfield, and bound for Sandusky, ran with great speed and violence into and against said freight car, whereby the concussion and shock was so great and violent that said Kelly's right arm, without any fault or negligence on his part, was knocked and forced out of the window of the car in which he was a passenger as aforesaid, and so broken and crushed by the collision of the said passenger car with and against said freight car that it became necessary to amputate the arm above the elbow in order to save his life, by reason whereof said Kelley has lost his right arm and suffered great pain and risk of his life, and incurred great expense in medicine and medical attendance, and other attendance and expenses, and
42 in the *the* permanent loss of his arm, and loss of wages for his labor, and other injuries then and there inflicted by said collision, and the said Kelly has sustained damages by reason of the premises in the sum of fifteen thousand dollars, which the said John S. Farlow as such receiver refuses to pay, although often requested to pay the same.

The said Kelly, therefore, prays that an account may be had of his damages aforesaid; that he may have judgment for the same; that said John S. Farlow, as such receiver, may be ordered to pay the same; and that he, the said Kelly, may have such other and further relief as equity and good conscience may require.

R. P. AND H. S. BUCKLAND, AND
BARTLETT AND FINNEFROCK,
Solicitors for Sylvanus Kelly.

The said Sylvanus Kelly, being first duly sworn, deposes and says that the several matters and things set forth in the foregoing complaint are, according to the best of his knowledge, information, and belief, true in substance and in fact.

S. KELLY.

Subscribed in my presence and sworn to before me this 12th day of November, A. D. 1878.

JOHN S. GREENE,
U. S. Commissioner.

Filed Nov. 13th, 1878.

43 *Answer.*

In the circuit court of the United States for the northern district of Ohio. In chancery.

JOHN C. PRATT ET AL.
vs.
THE CINCINNATI, SANDUSKY & CLEVELAND R. R. Company et al.

And now comes John S. Farlow, receiver of the Cincinnati, Sandusky and Cleveland R. R. Company, and for answer to so much of the complaint of Sylvanus Kelly, filed in the foregoing action, as he is advised it is material for him to make answer unto, and denies the following averments of said complaint, namely:

"That said receiver, by his agents and servants, so carelessly and negligently and unskilfully and improperly placed a freight car and permitted the same to remain on a side track to the main track of said railroad, in the town of Bellefountaine, Logan County, Ohio, and so near the main track that in consequence thereof and by the carelessness, negligence, and unskilfulness of the said receiver, by his agents and servants having charge and control of the train and car on which said Kelly was a passenger as aforesaid, in not observing that said freight car was so near said main track that said passenger train would strike said freight car in passing, and in not checking up and stopping said passenger train before reaching said freight car, which, with proper care and diligence, might and ought to have been done after
44 coming in sight of said freight car; and in carelessly and negligently running said passenger train into said station at Bellefountaine, and by said freight car, and at too great speed, and at a greater speed than was prudent, safe, or lawful, at or near said station, which said side track and freight car were within the corporate limits of said town of Bellefountaine; that said train and the car on which said Kelly was a passenger as aforesaid, coming from Springfield and bound for Sandusky, ran, with great speed and violence, into and

against said freight car, whereby the concussion and shock were so great and violent that said Kelly's right arm, without any fault or negligence on his part, was knocked and forced out of the window of the car in which he was a passenger as aforesaid, and so broken and crushed by the collision of the said passenger car with and against said freight car, that it became necessary to amputate the arm above the elbow in order to save his life; by reason whereof said Kelly has lost his right arm and suffered great pain and risk of his life, and incurred great expense in medicine and medical attendance and other attendance and expenses, and in the permanent loss of his arm, and loss of wages for his labor, and other injuries then and there inflicted by said collision," excepting that the train on which said Kelly was a passenger was going from Springfield to Sandusky; but, on the contrary, the said John S. Farlow, receiver, says that whatever injuries the said Sylvanus Kelly received or sustained on the occasion referred to in said complaint were caused by the negligence and want of care by the said Sylvanus Kelly in improperly exposing himself to injury while riding on said car, by so placing his arm in an open window of said car so that it projected
45 outside thereof, and thereby came in contact with said standing car. Wherefore the said John S. Farlow, receiver, &c., prays to be dismissed, with his costs.

S. A. BOWMAN,
Att'y for John S. Farlow, Receiver.

STATE OF OHIO,
Clark County, ss:

D. W. C. Brown, being duly sworn, says he is the agent of the said John S. Farlow, receiver of the Cincinnati, Sandusky and Cleveland Railroad Company; that the said John S. Farlow is a non-resident of this State, and is now absent therefrom, and that he believes the facts and statements in the foregoing answer to be true.

D. W. C. BROWN.

Sworn to before me and subscribed in my presence this 29th day of November, 1878.

W. F. BEVETT,
Notary Public.

Filed Dec. 12th, 1878.

Replication.

In the circuit court of the United States for the northern district of Ohio. In chancery.

JOHN S. PRATT ET AL.
vs.
THE CINCINNATI, SANDUSKY & CLEVELAND R. R. Company et al. } No. 3353. Replication.

And now comes Sylvanus Kelly, saving and reserving to himself all and all manner of advantage of exceptions to the manifold insufficiency of the answer of John S. Farlow, receiver of said railroad company, to the complaint of said Kelly, for replication thereto saith: That he will aver and prove his said complaint to be true, certain, and
46 sufficient in the law to be answered unto, and that the answer of the said Farlow is uncertain, untrue, and insufficient to be re-

plied unto; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things the said Kelly is, and will be, ready to aver and prove, as this honorable court shall direct, and prays as in and by his said complaint he hath already prayed.

SYLVANUS KELLY,
By R. P. AND H. S. BUCKLAND,
BARTLETT AND FINNEFROCK,
His Attorneys.

Filed Dec. 20th, 1878.

And afterwards, to wit, on the 3rd day of January, A. D. 1879, being a day of the October term, 1878, of said court, the following order was entered in this cause, viz:

JOHN C. PLATT ET AL.
vs.
CINCINNATI, SANDUSKY & CLEVELAND RAILROAD COMPANY ET AL. } No. 3353. In equity.

This cause having come on for hearing upon the application of Sylvanus Kelly for the appointment of a special master to take testimony and make a report upon the issue joined between said Sylvanus Kelly and John S. Farlow, receiver of the said Cincinnati, Sandusky and Cleveland Railroad Company, by reason of the petition and complaint of said Kelly heretofore filed herein by leave of the court,
47 it is ordered that the petition and complaint of said Sylvanus Kelly, the answer of said John S. Farlow, receiver, and the replication of said Kelly herein filed, be, and the same are hereby, referred to Homer Everett, esq., of the city of Fremont, who is hereby appointed a special master for that purpose, with authority to hear the matters set forth in said complaint, answer, and replication, and such evidence as the parties may offer relevant and pertinent to the issues therein made, and determine and report whether, under the law, the said receiver is liable for the injuries complained of by said Sylvanus Kelly; and, if so, the amount of compensation which said Sylvanus Kelly shall be entitled to receive for the same; that he give notice to the counsel for the parties of the time and place for said hearing, which shall be at such place most convenient for all parties concerned, as said master may designate, and that he report his findings, together with the evidence and costs of his proceedings, to this court as soon as possible, at the January term thereof; and said Homer Everett, master for the purposes of this hearing, is hereby invested with all necessary authority to summons such witnesses as may be required by the parties, to administer oaths, and do all things necessary to a full hearing and report of the matters herein referred to him.

It is further ordered that the clerk furnish said master with certified copies of the complaint, answer, and replication hereinbefore referred to, and a copy of this order be charged as a part of the costs of this cause.

48 And afterwards, to wit, on the 22nd day of January, A. D. 1879, it being a day of the January term, 1879, of said court, the following order was made, viz:

And it is further ordered that the order heretofore made in this cause referring the claim of Sylvanus Kelly to Homer Everett, esq., as master, be so modified as that either party may take depositions before a notary public of the State of Ohio, or other proper officer, upon giving the opposite party legal notice.

And afterwards, at the January term, A. D. 1879, on the 25th day of March, the following order was made in said court, viz:

The order heretofore entered in this cause requiring the special master commissioner appointed to assess damages on the application of Sylvanus Kelly to report his findings to the present term of this court, is modified so as to extend the time for said master to close the testimony on the hearing to April 8th, 1879, and that he make his report as soon thereafter as possible.

Motion to withdraw testimony.

April 14th, A. D. 1879, before argument.

Comes Sylvanus Kelly, by his attorneys, and moves the master to withdraw from the consideration of this case all testimony offered by said Kelly in relation to what men of ordinary care and prudence while riding in railroad passenger cars with windows open generally do with regard to resting their arms on the sill or base of the windows,
49 or in the windows while the cars are in motion, and that the same may be stricken out.

BUCKLAND AND BARTLETT,
Attorneys for Kelly.

Before any argument of the case.

The above motion and request is granted, and all testimony concerning what men usually do, and how they act relative to resting their arms on car windows, &c., as stated in the motion, is considered as withdrawn, and not to be considered in determining and will not be alluded to or taken into account as having any weight in determining the case.

Thereupon the counsel for said Farlow, receiver, excepts to the finding of said motion, and also excepts to the commissioner's ruling thereon, on the ground that having obtained the ruling of the master thereon admitting the evidence, and having introduced the same, it is not proper that their said motion be sustained.

HOMER EVERETT,
Master Commissioner.

Filed April 14th, 1879, and before any argument in the case.

Notice to take testimony on behalf of complainant Sylvanus Kelly.

John S. Farlow, receiver, will take notice that on Wednesday, the 5th day of February, A. D. 1879, Sylvanus Kelly will take the depositions of sundry witnesses, to be used as evidence on the hearing before honorable Homer Everett, of the matters referred to him as
50 special master commissioner in the above entitled cause, at the Wittenberger House, in Bellefountaine, Logan County, Ohio, before competent authority, between the hours of 8 o'clock a. m. and six o'clock p. m., and that the taking of the same will be adjourned from day to day between the same hours until they are completed.

SYLVANUS KELLY,
Per R. P. AND H. S. BUCKLAND,
His Attorneys.

Service of a copy of the above notice acknowledged this 31st day of January, A. D. 1879.

S. A. BOWMAN,
Def't's Attorney.

In the circuit court. In chancery.

UNITED STATES OF AMERICA,
Northern District of Ohio:

JOHN C. PRATT ET AL.
vs.
CINCINNATI, SANDUSKY & CLEVELAND R. R. Company et al.

Depositions of witnesses taken to be used as evidence on the hearing before Hon. Homer Everett of the matters referred to him as special master commissioner in the above-entitled case, in the circuit court for the northern district of the State of Ohio, United States of America, wherein John C. Pratt et al. are plaintiffs and the Cincinnati, Sandusky and Cleveland R. R. Company et al. are defendants, and for Sylvanus Kelly, in pursuance of the notice hereto annexed, and at the time and place therein specified, R. P. Buckland being present on behalf of the said Sylvanus Kelly and W. A. Scott, esq., attorney in behalf of defendants.

51

A. C. JENNINGS, of the county of Champaign and State of Ohio, of lawful age, being first duly sworn by me, as hereinafter certified, deposes as follows:

1st Quest. (By R. P. BUCKLAND, attorney for complainant.) Are you acquainted with Sylvanus Kelly, a party complainant in this suit?

Ans. I know him when I meet him.

2nd Q. State whether you were on the train of the Cincinnati, Sandusky and Cleveland Railroad Company at the time Mr. Kelly was injured by the collision at Bellefountaine, Ohio, on or about the 23rd day of August, A. D. 1877. And, if so, state the circumstances of the collision.

Ans. I was on the train, and in the same car with Mr. Kelly, Mr. Kelly sitting on the east side of the car, one or two sofas in the rear, and on the opposite side from where I was seated. My attention had been called to Mr. Kelly, by the fact that he looked as though he was suffering. He was sitting in a leaning or reclining position; his head resting on his hand; his elbow resting on the window sill of the coach. At the time the accident occurred I was looking out of the coach on the east side when the collision occurred, and almost instantly there was a very sharp crack, or report when Mr. Kelly's arm was struck. After the car arrived at the depot I got out and looked. The car in front of the one in which we were riding was struck on the northeast corner (running north, jamming it so much as to make us think the train was off the track). It struck the car we were in, but not so severely, just grazing it all along the car. (I think there was a mark all along made by the lumber or timber.)

52

(The portion of the answer in parenthises is objected to by defendants.)

3rd quest. What occasioned the collision?

(Question objected to by defendants' attorney.)

Ans. It was occasioned by a train of cars loaded with lumber being too near on e side track; so much so that the train we were in struck it.

4th Q. State whether you examined the freight-cars on the side track after the collision?

Ans. I did not examine them; only went far enough to see what produced the difficulty.

5th Q. State whether the passenger-train going south was on the side track at that time?

Ans. I do not recollect whether or not.

6th Q. How many coaches were there on the train you were on?

Ans. I don't recollect but two. How many more there might have been, I do not know.

7th Q. Describe the violence of the concussion caused by the collision, and how it effected yourself and other passengers in their seats?

(Objected to by defendants' counsel.)

A. We were shocked by the collision, and almost instantaneously a lady who sat in the rear of Mr. Kelly exclaimed that there was a man killed.

(Ans. objected to.)

8th Q. Who assisted Mr. Kelly after he was injured?

A. I could not tell who the parties were. I gave such assist-
53 ance, such as holding the am'onia while other parties were binding up his arm.

9th Q. What was the weather, and how were the windows of the car?

Ans. Weather pleasant and warm. The windows were hoisted. The window at which Mr. Kelly sat was hoisted.

10th Q. Was there any protection at the window where Mr. Kelly sat, bars, or anything of the kind, to prevent the arm from going out?

Ans. No, sir; I think not.

11th Q. Have you traveled frequently on railroad trains?

Ans. Yes, sir.

12th Q. What are the habits of passengers from your observation in placing their elbows on the window sills, when the windows are up in warm weather?

(Question objected to.)

Ans. I believe the custom is almost universal for passengers to place their arms or elbows on the window sills, when the windows are up in warm weather.

(Answer objected to.)

13th Q. At what point did you get aboard the train; at what time of the day, and when did the collision occur, and what train was it?

Ans. I got aboard the train at Urbana, Ohio. The Cincinnati, Sandusky and Cleveland train bound for Sandusky. It was about 12 o'clock when we went aboard the train; it was 18 miles to Bellfountaine. The train was not detained except by one stop at West Liberty; the collision occurred on the arrival of the train at Bellefountaine; cannot state exactly the time.

A. C. JENNINGS.

54 Also at the same time and place, in pursuance of the annexed notice, came JULIA A. JENNINGS, of lawful age, who, being by me first duly sworn according to law, as hereinafter certified, deposes as follows:

1st quest. (By R. P. BUCKLAND.) State your name, residence, and whether you are the wife of A. C. Jennings, who has given his deposition to-day in this case.

Ans. My name is Julia A. Jennings; my residence is Urbana, Champaign County, Ohio; I am the wife of A. C. Jennings.

2nd Q. State when you were on the train of the Cincinnati, Sandusky and Cleveland R. R. Company, at the time Mr. Sylvanus Kelly was injured by the collision at Bellefountaine, Ohio, on or about the 23rd day of August, A. D. 1877.

Ans. I was.

3rd Q. State whether you saw Mr. Kelly before and at the time the collision occurred. State your position and his position in the car.

Ans. I first noticed him at Round Prairie, south of Bellefountaine about 4 miles. Our seat was on the west side of the car; his seat was one or two seats back on the opposite side from us; he was sitting in a reclining position, with his head resting on his hands, his eyes closed, a small bundle on the seat at his side. I couldn't state whether his elbow was resting on the sofa or the window sill. It must have been the window-sill; I think it must have been the window-sill, from the position of his hand.

4th Q. State whether you noticed Mr. Kelly at the time of the collision, or immediately before.

55 Ans. Yes, sir; we were looking at Bellefountaine; as the train came in, he was on that side.

5th Q. What was Mr. Kelly's position at that time?

(Question objected to.)

Ans. His head was resting on his hand; his elbow either on the window-sill or arm of the sofa.

6th Q. What did the cars strike that made the collision?

(Question objected to.)

Ans. It was a freight train loaded with lumber.

7th Q. Where was the freight train standing?

Ans. The freight train was standing on the east side of the train, on the switch or side track.

8th Q. What was done with Mr. Kelly after he was injured?

Ans. They put a cord around his arm, and he was taken off the train at Bellefountaine.

Cross-examination by W. A. SCOTT, attorney for defendants:

1st quest. (By SCOT, att'y for def'ts.) Immediately preceding the accident, and for some moments prior thereto, were not you and your husband looking out of the window on the east side of the car at objects the train was passing, and talking about them?

Ans. We were looking out of the window as we were coming into Bellefountaine; I don't know whether we were talking or not.

2nd Q. Do you not recollect at that time your husband was pointing out to you objects of interest the train was passing, at which you were looking, and of which he was talking?

Ans. No, sir.

56 3rd Q. Was not your attention first attracted by the car forward of the one in which you were being struck?

Ans. My impression is there was three coaches. It struck first the car in front of ours, the second one in front of us; then it struck ours, banged the corner and racked the side of the coach. It was a fearful shock.

4th Q. At the moment of the collision, did you not at once turn toward your husband?

Ans. I don't remember.

5th Q. Were you in the last coach and rear car on the train?

Ans. I don't remember.

Also at the same time and place came W. H. CRETCHER, of the county of Logan and State of Ohio, of lawful age, who, being by me first duly sworn according to law, as hereinafter certified, deposes as follows:

1st quest. (By R. P. BUCKLAND, plaintiff's att'y.) State your name, residence, and profession.

Ans. W. H. Cretcher; Bellefountaine, Ohio; am a physician and surgeon.

2nd Q. State whether you attended Sylvanus Kelly, complainant in this case, and treated him for an injury received by him on or about the 23rd of August, A. D. 1877, and state where it was, and describe the injury.

Ans. I did treat Mr. Kelly for an injury received at that time; he was at the Branham House in Bellefountaine; the house is situated between the C., S. & C. and C. C. C. and I. Railroads, in Bellefountaine; it is the eating house of the two roads. I found him with a compound comminuted fracture of the arm, elbow, and the fore arm of the right
57 side; the humerus was comminuted for about one-half or two-thirds of the lower extremity; the elbow joint was torn through to a large extent; the head of the radius was dislocated, and projecting one or two inches through this wound of the elbow joint; the ulna was comminuted for about one-third of its upper extremity; his arm was crushed badly for about half foot above the elbow, and three or four inches below the elbow.

3rd Q. State your treatment of the injury, and the reason for such treatment.

Ans. I decided, upon first examination, that amputation of the arm above the injury was absolutely necessary to save the patient's life; but at that time he was in a collapsed condition from the effect of a shock received; I deferred the operation until a reaction could be established, relieving him from this collapse. I did not succeed in bringing about reaction for several hours, by which time Dr. Dunlap, of Springfield, Ohio, arrived, having been sent by Mr. Howard for the railroad company. Dr. Dunlap performed the operation. He remained in my charge until about September 5th, when he went home.

4th quest. How long after the injury, or what time of the day was it, when you first saw Mr. Kelly?

Ans. I think it was a little after the middle of the day; can't tell exactly the time; I know it was after the middle of the day; it was after the train had come in from the south.

5th Q. Did any other physicians consult with you in regard to the injury; if so, who were they?

58 Ans. I called on Dr. Fuller and Dr. Scarff, of Bellefountaine, Ohio; expecting to operate, I invited in several as friends, Dr. Watson and Dr. Covington. Dr. Rice, of Fremont, came down after the operation had been performed.

6th Q. Did Dr. Rice examine the injury, and the portion of the limb that had been amputated?

Ans. Yes, sir.

7th Q. State whether or not at any time after the amputation you considered the case critical or dangerous, as to the life of the patient.

(Question objected to by def'ts' att'ys.)

Ans. I considered that it was accompanied by all the danger usual to an amputation in that location; no more, or no less.

Cross-examination by W. A SCOTT, att'y for def'ts:

1st Q. State by whom were you paid for the services rendered Mr. Kelly.

Ans. By Mr. David Boyd, agent for the C., S. & C. R. R. Co.
W. H. CRETCHER.

Also, at the same time and place, came JOSEPH CORNER, of the County of Logan, of lawful age, who, being by me first duly sworn according to law, as hereinafter certified, deposed as follows:

1st Quest. (by R. P. BUCKLAND, att'y for complainant). State your name, residence, and occupation.

Ans. My residence is Bellefountaine, Ohio; my name is Joseph Corner; my residence is about 10 rods west of the Mad River depot (the old name); my business is keeping a livery stable.

2nd Q. State whether you are familiarly acquainted with the
59 main track and side track of the C., S. &. C. Railroad at and south of the station at Bellefountaine.

Ans. Yes, sir, I am acquainted with that; not as well as some others, but have been over it frequently.

3rd Q. State what the grade is, up or down, from the crossing of the C. C. C. and I. Road of the main track and side track.

(Question objected to by defendants' counsel.)

Ans. It is down grade south.

4th Q. State whether you were on or along that side track on or about the 23rd day of August, A. D. 1817, the day that Mr. Sylvanus Kelly, complainant in this case, was injured there.

Ans. I was there on the day Mr. Kelly was injured; that is the only thing I can call up that it was that day.

5th Q. What time was it?

Ans. On that day I was not down there until after the collision.

6th Q. What arrangements, if any, was there on that side track to prevent cars from running into the switch at the connection of the side track with the main track at the south end?

(Question objected to by defendants' att'y.)

Ans. I did not see anything at that time to prohibit them from running in. If there was, I didn't see it.

7th Q. What arrangement have you seen there since for that purpose?

(Question objected to.)

Ans. I do not know what you would call it; there is something there that lies across the track; they take it off before they can go up
60 or down. I was on the train coming from the south, they had to lift it off the track, so as to let the train from the north pass them.

8th Q. When was that?

Ans. That was some time along in the fall, two months afterwards; it might have been last spring. I couldn't state the exact time, but it was since the collision.

9th Q. State whether, before Mr. Kelly's injury spoken of, you had seen any freight cars run into the switch or so near the main track that a train could not pass on the main track without hitting the cars on the side track.

(Objected to.)

Ans. Yes, sir; I had.

10th Q. How often have you seen that occur?

(Question objected to.)

Ans. I recollect of twice I have seen it occur.

11th Q. Did you observe the passenger train that came from the south that collided with the freight train at the time Mr. Kelly was injured?

Ans. Yes, sir; I seen the train.

12th Q. What injury did you observe on the passenger cars?
Ans. They were bruised up on the side; east side of the cars.

Cross-examination by W. A. SCOTT, att'y for def'ts:

1st Q. Were you present when the accident occurred?
Ans. I was not down there; was coming from the house to the depot.
2nd Q. When, prior to the time of the accident, had you last examined the switch where the accident occurred?
Ans. I could not tell the exact time when.
3rd Q. Was it weeks or months before?
61 Ans. I don't think it was more than a week or three; could not have been a month.
4th Q. At that time did you notice all the peculiarities of the road bed in that vicinity so as to be able to testify about them now?
Ans. No, sir; I did not go down for the purpose of examining the road-bed.
5th Q. What kind of a day was it, and who was with you?
Ans. It was a pretty day when I passed there. I did not go down to examine that switch; went down there to see a piece of ground below there; it was then I seen those cars standing so close to the track. I called attention of some one to them, do not know who they were, that they might run into them—the passenger trains.
(The above answer, excepting the first five words objected to as not being responsive to the question by def'ts' counsel.)
6th Q. Was the car on the switch that struck the train on Aug. 23rd, 1877, loaded or empty?
Ans. I do not know whether it was loaded or not; it was a box car.
7th Q. Does any other road than the C., S. and C. use this side track on which this box car stood?
Ans. Well, I don't think they do.
8th Q. Does not that switch track connect the C., S. and C. and the C. C. C. and I. Roads?
Ans. It may connect at the upper end; but at the lower end it comes out on the Mad River Railroad or C., S. & C. Railroad now. I say that it starts from the Mad River Road above and goes into the main track below.
62 9th Q. Do you not know that that switch track is used by C. C. C. and I. locomotives and trains?
Ans. Down as far as the round house they may have frogs that let them in there; I do not know what locomotives and trains use it.
10th Q. What is the grade per mile of that switch?
Ans. I don't know.

JOSEPH CORNER.

Also at the same time and place came GLANCUS BARCAFER, of the county of Logan, of lawful age, who being by me first duly sworn, according to law as hereinafter certified, deposes as follows:

Five o'clock p. m., the examination was adjourned to 7 o'clock p. m. all parties agreeing to same.

7 o'clock p. m.—Present, the same attorneys and same witness.

1st Q. (By complainant's attorney.) State your name, place of residence, and occupation.
Ans. My name is Glancus Barcafer; residence, Bellefountaine, Ohio; occupation, a blacksmith.
2nd Q. State whether you were on the train of C. S. & C. R. R. bound

from Springfield to Sandusky on the 23rd of August, A. D. 1877, on which Mr. Kelly, the complainant, received his injury.

Ans. I was on the train a certain day, the date I couldn't state, when the injury was received.

3rd Q. What time of the day did that train arrive at Bellefountaine?

Ans. I couldn't say positive; after dinner time.

4th Q. Did you see Mr. Kelley after he was injured, and when?

Ans. Yes, sir; I seen him going down the steps of the coach.

5th Q. Which car of that train were you in?

63 Ans. The smoking car.

6th Q. At what point, where and with what did the passenger train collide?

Ans. It was at the south end of the side track of the C. S. & C. Railroad; collided with a box car standing on side track.

7th Q. At what rate of speed was the train running at that time?

(Qustion objected to.)

Ans. I couldn't state the rate of speed, it was too fast for me to get off at the foundry.

8th Q. What foundry do you refer to, and where is it located in reference to the place of collision?

Ans. The foundry is James Lockhart's, east of the side track, close along side.

9th Q. State whether you have worked in the foundry, and if so, how long.

Ans. Worked from the first of May to the 21st of September, A. D. 1877.

10th Q. State how frequently during that time you saw this side track upon which the freight car stood.

Ans. Nearly every day during that summer.

11th Q. State during that time what you observed as to cars on that side track moving down to the switch connecting with the main track.

(Question objected to.)

Ans. I have seen too close for safety frequently.

12th Q. State whether previous to the injury of Mr. Kelly referred to, there was any arrangement or fixture to prevent cars on the side track moving too near the main track at the south end of the

64 side track.

(Question objected to.)

Ans. No, sir; there was nothing.

13th Quest. What has been done since that time to prevent cars moving too far south on that side track?

(Question objected to.)

Ans. There has been a wooden block placed over one rail with a hasp to it.

14th Q. When was that block put there; how long after the injury of Mr. Kelly?

(Objected to.)

Ans. I don't know how long afterwards it was put there; I don't think it was there while I worked at Lockhart's.

15th Q. At what time do you remember of first seeing it there?

Ans. It was in October after the county fair, and after the injury.

16th Q. State what is the grade up or down from the crossing of the C. C. C. and I. Railroad to the south end of the side track.

(Question objected to.)

Ans. The grade is down, south.

17th Q. How far is the main track straight, going south from the south end of the side track?

Ans. I couldn't exactly tell you the distance, but it is far enough to the obstructions, about half a mile.

GLANCUS BARCAFER.

STATE OF OHIO,
Logan County, ss:

I, Milton Steen, a notary public in and for the county and State aforesaid, duly commissioned and qualified to administer oaths and take depositions, do hereby certify that the above named A. C. Jen-
65 nings, Julia A. Jennings, W. H. Cretcher, Joseph Corner, and Glancus Barcafer, were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the foregoing depositions by them respetively subscribed, were in the presence of said witnesses reduced to writing by me, and were written, and by said witnesses respectively subscribed in my presence, and were taken at the time and place specified in the enclosed notice, and that I am not a relative or attorney of either of said parties nor otherwise interested in the event of said action and proceeding. In testimony whereof I have hereunto set my hand and official seal this 5th day of February, A. D. 1879.

[SEAL.] MILTON STEEN,
Notary Public, Logan County, Ohio.

Fees paid by complainant S. Kelly, $9.50.

MILTON STEEN,
N. P., Bellefountaine

Also DAVID JUNE, duly sworn, testified as follows:

1st Q. State your name, age, residence, and occupation.

Ans. David June, aged 54 years, residence Fremont, Ohio; my occupation is that of a machinest.

2nd Q. What business are you carrying on in Fremont, and how long have you carried on the same business?

Ans. I have been carrying on furnace business and building machinery twenty-five years.

3rd Q. State if you are acquainted with Sylvanus Kelly, plaintiff; if so, how long have you known him?

Ans. Twenty-four years.

66 4th Q. What was the occupation of Mr. Kelly at the time he received the injury to his arm?

Ans. He was a machinest and in my employ.

5th Q. How long had he been in your employ?

Ans. He had been in my employ about 24 years, excepting about 18 months, at different times in all; sometimes he would be away 3 months, sometimes four, and one time six months; in all about 18 months.

6th Q. At the time of injury referred to, what were his qualifications as a machinest?

Ans. He was the best we had; we paid him the highest wages, he was a first-class machinest, and we so considered him for a good many years.

7th Q. What did he earn per day at and previous to the time of his injury?

Ans. I have not examined my books, but my recollection is that we paid him from two and a quarter to three dollars per day, for the last fourteen years. At the time of his injury my recollection is that we were paying him two dollars and a half a day.

8th Q. What is his capacity to earn wages as a machinest since the injury referred to?

Ans. Well, he has had no capacity at all, sir.

Cross examined:

10th Q. Do you consider Mr. Kelly a man of good general intelegence?

Ans. I do sir.

11th Q. Do you think him of sufficient capa ity to manage or act as foreman of a machine shop?

Ans. I think he was well qualified for that before his injury.

67 12th Q. Were his qualifications for these duties unusually good?

Ans. Yes, sir; better than three quarters of the machinests.

13th Q. Has the loss of his arm impaired his mind?

Ans. I have not been with him enough to know since the loss of his arm.

14th Q. Has the loss of his arm impaired his general health?

Ans. I don't know as I can answer that; I have no knowledge.

15th Q. Has Mr. Kelly been in your employ since his accident?

Ans. He has not, more than do an errand for me since that time.

16th Q. What was Mr. Kelly engaged at during the periods he left your employ, you have spoken of?

Ans. Well, he was a marine engineer, that is, acting as an engineer of a steamer on the lakes and on the river, and also working at his trade in the Lake Erie and Louisville R. R. shops as a machinest.

17th Q. What is Mr. Kelly's age?

Ans. About 42 years.

18th Q. Was he traveling on business for your firm at the time of the accident?

Ans. He was.

19th Q. About what proportion of his time was he away from home on business for the firm during the year next previous to his accident?

Ans. About one-eighth.

20th Q. Was that about the proportion of his time which his duties as your employé took him away from home in a year, and the relation he had to your firm at the time of the accident?

Ans. His absence would run from one-sixth to one-eighth of the time.

68 21st Q. Is Mr. Kelly a competent marine engineer?

A. Yes, sir; I consider him so.

Re-examined by Mr. BUCKLAND:

22nd Q. What did you send Kelly away from home to do?

Ans. To start an engine, and settle for it; that, and to put engines in repair was what we generally sent him from the shop for.

23d Q. What is Mr. Kelly's capacity for performing that kind of duty since his injury?

Ans. Well, sir, physically he has no capacity.

24th Q. What is Mr. Kelly's capacity to act as foreman of or manage a machine shop since his injury?

Ans. Well, physically, he can do nothing now; mentally, he is as good as ever as far as I know.

20th Q. Did he ever act as foreman of your machine shop?

Ans. He has had charge of a gang of men in the shop, more or less, for the last fifteen years. He never had full charge of the shop as foreman. To explain, that gang of men—we divide our men up into gangs, for the class of work they are to do, and then put a gang boss over them

26th Q. What are the duties of a gang boss, and what part of the work, if any, does he do?

Ans. He has entire charge of the work of the men, and does the most particular part himself.

27th Q. What is Mr. Kelly's capacity, since his injury, to perform the duties of gang boss of the men as you speak of?

Ans. The duties of the gang boss is to do the most accurate part of the work; since Mr. Kelly's injury he is wholly incompetent.

28th Q. What is the capacity of Mr. Kelly since his injury to
69 perform the duties of marine engineer?

Ans. Wholly incompetent.

29th Q. What experience have you had as marine engineer?

Ans. Sixteen years of running and building marine engines.

Recross-examination by Mr. BOWMAN:

29th Q. In speaking of Mr. Kelly's lack of qualification, in your examination, you base it wholly on the fact that he has lost one of his arms, do you not?

Ans. On the fact that he has lost his right arm.

DAVID JUNE.

Also SYLVANUS KELLY, who being duly sworn, testifies as follows:

1st Quest. State your name, age, occupation, and place of residence?

Ans. My name is Sylvanus Kelly; my age is 42 years; occupation, I was a machinest until I lost my arm; since only doing errands; my residence, city of Fremont.

2nd Q. State the circumstances under which you received the injury resulting in the loss of your arm, on the 23rd day of August, 1877.

Ans. I got abroad of the C. S. and C. train about 11 o'clock, forenoon, at Springfield, Ohio. I was bound for Clyde, on that road. In coming into the town of Bellefountain I met with a crash. I was in the rear car of the train. I was sitting on the right hand side of the coach. I was faced to the front of the train. I was a little forward of and near the centre of the coach. The coach window at my right hand was open. I sat with the elbow of my right arm on the window sill, or base of
70 the window. I was leaning forward, resting my forehead on my right hand. While in that position, the sensation was that the car was struck a fearful blow sideways, and my arm was injured at that same instant.

3d Q. In what manner, and how was your arm injured?

Ans. My elbow was crushed, and I was thrown over to near the center of the car.

4th Q. What effect did the blow upon the car have, if any, as to displacing the position of your elbow on the window sill?

Ans. I think the effect of it would be that it jarred off of the window sill.

5th Q. In what direction, in or out?

Ans. Jarred it out would be the effect.

6th Q. In what particular position, with reference to being inside or outside the car, was your elbow at the instant your arm received the injury?

Ans. Well, I think it was in the window at the time it received the injury.

7th Q. How in the window? I mean at the instant you received the injury?

Ans. I don't know that I can tell to the fraction of an inch just where it was at the time it was struck.

8th Q. State about where it was? I mean at the very instant it received the injury?

Ans. Well, my elbow was resting on the window sill. The blow of the car might have caused it to slip over perhaps in the position it was standing at the time.

9th Q. What caused this blow on the car?

Ans. I don't know anything further, only it was struck; that was my feeling.

10th Q. By what was it struck?

Ans. I don't know as I can answer that, only from what I heard.

71 11th Q. To what was your attention directed at the time the car was struck, if anything?

Ans. For several minutes previous to the time it was struck my attention was directed to a very bad headache that I had. My attention was directed to the headache I had at the time.

12th Q. What was you looking at, if anything, at the time the car received the blow?

Ans. I was not looking at anything particular, only looking down, sitting this way (here witness leaned forward, putting his hand over his forehead and eyes.)

13th Q. To what extent was your elbow and arm injured?

Ans. Well, I don't know as I can explain that fully; my elbow was crushed so that the bones of my arm projected up through my coat.

14th Q. What effect did the injury have at the time, if any, to render you unconscious?

Ans. It did not render me unconscious at the time.

15th Q. Can you tell what object it was that came in contact with your arm causing the injury?

Ans. I cannot be positive as to what came in contact.

16th Q. What effect, if any, did the blow or shock have upon your person other than injuring and crushing your arm?

Ans. It had no other effect except to jar me away from the side of the coach.

17th Q What did you do upon receiving the injury?

Ans. The first thing I done was to look at my arm; the next thing I said, was the arm was gone, and started to the front door of the car; I was taken hold of immediately by some passengers, who put a bandage or twist on my arm, and as soon as we ran down to the station

72 they helped me off into the boarding house, and I was taken upstairs and helped onto a bed. I was stripped to see what the damages were, and discovered that my elbow was badly mashed. I staid at the hotel in Bellefontaine I think fourteen days. I came home. Dr. Cretcher came with me; he was my attending physician; we came to Fremont.

18th Q. How long did you remain sick from the effects of that injury?

Ans. I was confined to my bed about four weeks; then I began get out a little—ride out. It was about three months before I began to feel well again, so I could make a good healthy shadow.

19th Q. What is the fact of your being able to work at your trade since you received the injury spoken of?

Ans. I am not able myself at all to work at it.

20th Q. What is the fact as to your having purchased a ticket of the C., S. and C. R. R. Company for a passage to Fremont on the occasion when you were hurt?

Ans. I purchased ticket at Springfield, Ohio, for one passage from Springfield to Clyde over the C., S. and C. R. R.

Cross examined by Mr. BOWMAN:

21st Q. When had you left Fremont on the trip on which your arm was hurt?

Ans. I believe it was on the 21st of August, I left here and went to a place about 7 miles from Springfield, Ohio. I got there about three o'clock a. m.

22rd Q. How did you go out there from Springfield?

Ans. In a spring wagon; a light wagon.

23d Q. Was you setting and settling for an engine at that place?

Ans. I went down to adjust an engine that had been run a little while.

73 24th Q. How soon did you go to the engine after you got there?

Ans. Right away after breakfast on the morning of the 22nd of August.

25th Q. How long did you work with and about the engine?

Ans. I was with the engine all that day.

26th Q. Did you stay with the engine all night?

Ans. No, sir; we quit threshing about dark.

27th Q. Did you get your pay for the engine?

Ans. I was not settling for the engine; I had pay for my expenses.

28th Q. What time did you get back to Springfield?

Ans. I think about fifteen minutes before train time.

29th Q. How long had you your arm on the sill of the window of the car before you were hurt?

Ans. I could not tell exactly how many minutes; some few minutes.

30th Q. How long had you had your headache before you was hurt?

Ans. I had some of it when the train left Springfield.

31st Q. Was it a very warm day?

Ans. Yes; I considered it rather warm.

32d Q. Did you get into the seat at Springfield in which you were sitting at the time you were hurt?

Ans. I did, if I recollect right.

33rd Q. Did you remain there until after you was hurt?

Ans. I did till I was hurt.

34th Q. You were not sleeping were you at the time of this accident?

Ans. No, sir.

35th Q. Had you been sleeping at any time before between Springfield and Bellefountaine?

Ans. No, sir; not while I was on the train.

36th Q. What were you doing while the train went from Springfield to the place where the accident occurred.

74 Ans. Part of the way down I was looking over some accounts I had collected, and counting the bills and change to see if they came out right. After that my headache came on pretty severely, and I leaned my head on my hand as I have mentioned.

37th Q. Where was the train when your headache came on pretty severe?

Ans. I could not tell the exact place. I am not well enough acquainted in that country to tell.

38th Q. Was it before or after you passed Urbana?

Ans. It came on worse after I passed there and kept getting worse.

39th Q. About how long was it before the accident happened that you put your arm on the sill of the window?

Ans. I cannot just tell how many minutes.

40th Q. About how long after you left Urbana did you do this?

Ans.

41st Q. When you put your arm on the sill of the window was the window open?

Ans. Yes, sir.

42nd Q. Do you remember the amount of the accounts you had collected that you refer to?

Ans. I don't just remember now.

SYLVANUS KELLY.

The above-named David June and Sylvanus Kelly were severally sworn by me to testify the truth, the whole truth, and nothing but the truth, and their respective depositions were written by me, and by them subscribed before me on this 13th day of February, A. D. 1879.

HOMER EVERETT,
Master Commissioner.

75 *Notice to take testimony.*

JOHN C. PRATT ET AL.
vs.
C., S. AND C. R. R. CO. ET AL. } In chancery.

John S. Farlow, receiver, will take notice that on Tuesday, the 18th day of February, A. D. 1879, Sylvanus Kelly will take the depositions of sundry witnesses, to be used in evidence on the hearing before Homer Everett of the matters referred to him as special master commissioner in the above-entitled cause, at the office of Foraker and Black, S. E. corner of 5th and Walnut streets, Cincinnati, Ohio, before competent authority, between the hours of eight o'clock a. m. and six o'clock p. m., and that the taking of the same will be adjourned from day to day between the same hours, until they are completed.

Feb. 13th.

SYLVANUS KELLY,
Per R. P. AND H. S. BUCKLAND,
His Att'ys.

Service of a copy of the above notice acknowledged this 13th day of February, 1879.

S. A. BOWMAN,
For Def'ts.

Depositions of sundry witnesses taken before me, N. Rockhold, jr., a notary public within and for the county of Hamilton, in the State of Ohio, pursuant to the annexed notice, and at the time and place therein specified, to be read in evidence on behalf of the plaintiff in an action pending in the circuit court of the United States for the northern district of Ohio, wherein John C. Pratt et al. are plaint-
76 iffs and The Cincinnati, Sandusky and Cleveland Railroad Company et al. are defendants; R. P. Buckland, esq., being present on behalf of the plaintiffs, and Percy Norton, esq., on behalf of defendants.

ALEXANDER STUART, being first duly sworn, deposes and says as follows:

1st quest. (By R. P. BUCKLAND, esq.) Please state your name, age, residence, and occupation.

Ans. My name is Alexander Steuart; my age is 42 years. I reside in Oakley, near the city of Cincinnati; manufacture and sale of spices.

2nd Q. State whether you were on the train on the 23rd of August, 1877, when Sylvanus Kelly, plaintiff in this case, was injured at Bellefountaine, Ohio.

Ans. I was.

3rd Q. Give the circumstances of the occurrence of that injury.

Ans. I got on the train at Urbana, going north, stopping at Bellefountaine. While approaching the depot at Bellefountaine the car on which Mr. Kelly and I were traveling came in collision with freight trains on the side track, from which Mr. Kelly's arm was broken. My attention was first called to Mr. Kelly's accident by the scream of a lady and breaking of the glass in the car windows. The freight cars were standing on the side track, so near the train on which we were traveling that they struck against our car.

4th Q. Describe as well as you can the effect of the concussion of the collision on yourself and other passengers.

Ans. There was quite a severe concussion, so much so as to considerably bruise the car on which we were traveling, also to disturb in their seats.

77 5th Q. State whether you examined the outside of the passenger car, and also the freight cars standing on the track; and if so, what evidence of a collision did you notice?

Ans. I did examine the car upon which I rode; the front corner was considerably bruised by the collision, also some panes of glass broken. The side track on which the freight cars stood seemed to be down grade, and if left without a brake would naturally move toward the main track. To the best of my recollection there was a scar on the corner of the passenger car, caused by coming in contact with the freight cars.

6th Q. Did you go down to where the freight cars were standing when they struck the passenger car?

Ans. I did.

7th Q. How many freight cars were there standing on the track?

Ans. To my recollection, there were two or more.

8th Q. From the position in which the lower or southernmost freight car stood, what part of the freight car would strike the passenger car?

Ans. The corner would strike it, I think.

9th Q. Did you see any marks on the freight car in evidence of the collision?

Ans. I did not notice any.

10th Q. You speak of a scar on the side of the car; please state to what extent that scar extended?

Ans. The scar was between the front end of the car and the middle; that was not so much bruised as the corner which was first struck.

11th Q. State whether the conductor of the train was in that car at the time of the collision.

78 Ans. I think not. I first saw him at the door, while we assisted to bind up Mr. Kelly's arm. My impression is that he came in from a car in front.

12th Q. Did you see any of the train men in the car at that time?

Ans. If I did I did not know them. I was not acquainted with any person on the car.

13th Q. Did you observe Mr. Kelly at any time prior to his injury?

Ans. I did not.

14th Q. State whether you, at the time you examined the freight

cars, you went from the depot along the main track to the point where the freight cars stood.

Ans. I did not; to the best of my recollection I went from the hotel.

15th Q. Which way did you go when you went away from the lower end of the side track where the freight cars stood?

Ans. I think I went back to the hotel the same way I came.

16th Q. How long after the collision was it before you went down to where the freight cars stood?

Ans. I think within an hour.

17th Q. How long after collision was it before you examined the passenger car in which Mr. Kelly was injured?

Ans. In a few minutes after, at the depot.

18th Q. What was the weather at that time?

Ans. It was an ordinary clear August day.

19th Q. How were the windows in the car, up or down, generally?

Ans. I think some were up and some down.

20th Q. Was there any protection to prevent passengers' arms from protruding out the window when the windows were up, bars or grating?

Ans. No, sir; nothing more than on any other car. The construction was like all others.

21st Q. What business were you engaged in at that time, and had been engaged in previous thereto?

79 Ans. The business of commercial traveller I was in at that time, and had been engaged in that business about ten years, travelling part of the time, and part of the time at home.

22nd Q. What is the fact about the custom of passengers resting their elbows or arms on the base of the windows, when the windows are up, in warm weather?

(Objected to.)

Ans. I think they frequently rest their arms on the base or sill of the windows.

23rd Q. What class of passengers do that?

(Objected to.)

Ans. I do not know that it is confined to any particular class.

Cross-examination by PERCY NORTON, esq., att'y for def'ts.

24th Q. Where did you sit in the coach?

Ans. I sat at the front part on the left hand side of the coach.

25th Q. Where did Mr. Kelly sit?

Ans. He sat on the right hand side of the car about the middle.

26th Q. Who put the handkerchief on the arm of Mr. Kelly to stop the flow of blood, with twist?

Ans. I assisted with others, one of whom I understood to be the conductor. I used my own handkerchief, and I think there were others used.

27th Q. Are you sure that it was a freight train which the passenger car struck?

Ans. I think it was an ordinary freight train.

28th Q. Was there an engine attached to this freight train?

Ans. If there was I did not discover it.

29th Q. What do you consider constitutes an ordinary freight train?

Ans. Box or grain cars, stock cars, lumber or stone cars, I
80 consider freight trains.

30th Q. Do you mean that any number of the cars which you have named attached to each other constitute a freight train?

Ans. I could not say that they constituted a freight train unless two or more freight cars on a side track would constitute a freight train.

31st Q. What kind of a car was it that the passenger coach struck?

Ans. To the best of my recollection I think it was a box car.

32nd Q. You say that the panes of glass in the coach windows were broken. How many panes of glass were broken?

Ans. That I could not state.

33rd Q. Was there one?

Ans. That was the first thing that drew my attention that any one was hurt. I think there was one.

34th Q. Where was the broken pane located in the car?

Ans. I think it was about the middle, on the right hand side.

35th Q. Do you now remember of there being more than one?

Ans. I could not say positively.

36th Q. Is it true that you went from the hotel directly to the place where the freight cars stood without passing down the main or side tracks to reach that point?

Ans. That is my recollection, although I could have gone either way.

37th Q. How do you know that the side track on which the freight cars stood is down grade?

Ans. It looked to be, the way I form my idea.

38th Q. You judge only from your eye?

Ans. Only from my eye.

39th Q. You say that you passed from the hotel to the location of the cars by some other road than the railroad, and that you judge that the side track was down grade simply by your eye?

81 Ans. My recollection is that I went to the side track by some other road beside the railroad track, and that I judged of the side track being down grade by my eye.

40th Q. What portion of the freight car struck the coach?

Ans. From the position in which they stood I think it would be the corner.

41st Q. The upper corner of the freight car?

Ans. I would think the upper corner of the freight car.

42nd Q. You say it was a clear August day. Now, didn't it in fact rain on that day?

Ans. It was clear and sunny at the time the collision took place, to the best of my recollection. It may have rained later in the day.

43rd Q. Wasn't there signs of rain when you reached Bellefountaine, showing that it had rained early in the day?

Ans. I do not recollect of any.

44th Q. Was there a place to rest the arm in this passenger coach in which Mr. Kelly sat, without placing it on the sill of the window? That is to say, an inside rest within where the sash falls?

Ans. I think there was.

45th Q. How much was the passenger coach injured; that is, about the depth of the gash along the side of it?

Ans. There was quite a bruise on the front corner of the coach, and a scar on the side not so deep as the bruise on the corner.

46th Q. Upon what portion of the passenger coach was this scar?

Ans. About the center, or a little above, between the bottom and the top of the car.

47th Q. Was it not in the upper portion of the side of the car, where the name of the road is painted?

82 Ans. Not so high as the name of the road.

48th Q. How close to the name was it?

Ans. From my eye, I would suppose it to be 2 feet below the name of the road.

49th Q. What is the h'ighth of a passenger coach, judging from your eye?

Ans. I would say from six to seven feet.

50th Q. Has this accident been called to mind since it occurred; and if so, how often?

Ans. Twice, I believe.

51st Q. When, and by whom?

Ans. By General Buckland the first time, in the winter of 1877. The next time the latter part of January or February, 1879.

Redirect:

52nd Q. You say to question by defendants that you think there was a rest for the elbow in the seat where Mr. Kelly sat in that car, inside of the sill or base of the window; did you examine the window for the purpose of determining the fact?

Ans. I did not.

ALEX. STUART.

THE STATE OF OHIO,
Hamilton County, ss:

I, N. Rockhold, jr., a notary public in and for the county and State above named, duly commissioned and qualified, do hereby certify that the above named Alexander Stuart, was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition by him subscribed as above set forth, were reduced to writing by me in the presence of the witness, and were subscribed by the
83 said witness in my presence; that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

In testimony whereof, I have hereunto set my hand and official seal this 18th day of February, A. D. 1879.

[SEAL.]

N. ROCKHOLD, JR.,
Notary Public, Hamilton County, Ohio.

Received from plaintiff the sum of $5.75, in full of my fees and witness fees.

N. ROCKHOLD, JR., *N. P.*

Notice.

JOHN C. PRATT ET AL. *vs.* C. S. & C. R. R. CO. ET AL. } In chancery.

John S. Farlow, receiver, will take notice than on Tuesday, the 11th day of March, A. D. 1879, Sylvanus Kelly will take the depositions of sundry witnesses, to be used as evidence in the hearing before Hon. Homer Everett, of the matters referred to him as special master, commissioner in the above entitled cause, at the office of Wert, Walker and Wert, in Bellefountaine, Logan County, Ohio, before competent authority, between the hours of 8 o'clock a. m. and 8 o'clock p. m., and that the taking of the same will be adjourned from day to day between the same hours, until they are completed.

SYLVANNUS KELLY,
per R. P. AND H. S. BUCKLAND, AND
BARTLETT & FINNEFROCK,
His Att'ys.

Service by copy acknowledged.
M'ch 5th, 1879.

JOHN M. BOWMAN,
Atty for C. S. & C. R. R. Co.

84 UNITED STATES OF AMERICA,
Northern District of Ohio:

In the circuit court. In chancery.

JOHN C. PRATT ET AL.
vs.
CINCINNATI, SANDUSKY & CLEVELAND R. R. Co. et al.

Depositions of witnesses taken to be used as evidence on the hearing before Hon. Homer Everett, of the matters referred to him as special master commissioner in the above entitled case, in the circuit court of the northern district of Ohio, United States of America, wherein John C. Pratt et al. are plaintiffs and The Cincinnati, Sandusky and Cleveland Railroad Company et al. are defendants, and for Sylvanus Kelly, in pursuance of the notice hereto annexed, and at the time and place therein specified, H. R. Finnefrock being present on behalf of Sylvanus Kelly, and James Walker in behalf of defendants.

Mrs. EMILY HENDERSON, of the county of Logan, and State of Ohio, of lawful age, being first duly sworn by me as hereinafter certified, deposes as follows:

1st Q. (By H. R. FINNEFROCK, att'y for comp'ts). State your name, age, and place of residence.

Ans. Mrs. Emily Henderson; age, 35 years; I live in Bellefountaine, Logan County.

2nd Q. State where you resided on or about August 23rd, 1877.

Ans. In Bellefountaine, on the east side of the Cincinnati, Sandusky and Cleveland R. R. track.

3rd Q. Do you live above or below the southern point of the south switch on said R. R. track?

Ans. I live south of the switch.

85 4th Q. How far south of the southern point of said switch do you live, and how far from said railroad track?

Ans. I live about 15 or 20 rods south of the switch, and about sixty feet from the railroad track.

5th Q. Did you see the passenger train going north on said road on the day that the accident occurred in which Mr. Kelly's arm was injured?

Ans. Yes, sir.

6th Q. About what time was it when you saw said train coming in, and was it the same train on which the accident occurred?

Ans. About twelve o'clock. It was the same train on which the accident occurred.

7th Q. Did you notice the speed of said train; and if so, was it running at a greater speed than they usually do at said point?

(Question objected to as leading.)

Ans. I noticed the speed. It was a great deal faster than they usually run at that point.

8th Q. Have you any knowledge of the speed with which the trains approach said switch coming from the south?

Ans. I saw them coming in every day there.

Cross examination by JAMES WALKER, attorney for defendants:

1st Q. How do you know it was the train on which the accident occurred?

Ans. From where I saw this man a sitting, I know it was the train he was hurt on.

2nd Q. Did you see him in the cars on that day before the accident occurred?

86 Ans. Yes, sir; I saw him leaning on his arm. His arm was not out of the car—just about on the middle of the window.

3rd Q. Wasn't the train moving so slowly that you could distinctly recognize his co'ntenence and his position?

Ans. No, sir; it was not.

4th Q. At what rate of speed was it running, 25 miles an hour or more?

Ans. I guess it was going about as fast as it could go.

5th Q. How far were you from the train when it passed you?

Ans. I wasn't more than twenty or thirty feet from it.

6th Q. Were you outside or inside of your house?

Ans. I was outside of the house, in the yard.

7th Q. How do you know the train was running faster that day than usual?

Ans. I was right there and took notice to it going so quick.

EMILY HENDERSON.

Also, at same time and place, came MARY WHETSEL, of the county of Logan, State of Ohio, of lawful age, by me first duly sworn as hereinafter certified, deposes as follows:

1st Quest. (By R. R. FINNEFROCK, att'y for comp'ts). State your name, age, and place of residence.

Ans. Mary Whetsel; 28 years old; live in Bellefountaine, Logan County, Ohio.

2nd Q. Where did you reside on or about August 23rd, 1877?

Ans. On the east side of the Cincinnati, Sandusky & Cleveland R. R., in Bellefountaine.

3rd Q. How far east of said railroad do you live?

Ans. It is about 30 feet from the railroad to where my house is.

4th Q. Did you reside north or south of the south point of the

87 switch of said railroad?

Ans. South.

5th Q. About how far south of said switch?

Ans. About fifty or seventy-five feet.

6th Q. Did you hear of the accident about the 23rd of August, 1877; and, if so, how soon after it occurred, and where did it occur, and on what railroad?

Ans. Yes, sir; I heard of it in few minutes after it occurred. It occurred down on the Cincinnati, Sandusky and Cleveland Railroad, right at the southern point of the switch, near my house.

7th Q. State what caused said accident, if you know.

Ans. I was standing out looking at the freight car and noticed one car being down so close to the switch, and there were two more come down and shoved the other one down so low that I noticed it shoving the other car down. I knew if they didn't go back the passenger would run into the freight. I noticed that the freight was about a rail and a half from the switch. I heard the blow, but did not see the passenger train.

8th Q. How long after you saw the freight car run down about a rail and a half from the main track before you heard the blow of the collision?

Ans. It was about five or ten minutes.

9th Q. Was there an engine attached to the two cars which you say came down the switch and struck the lower freight car and run them down within a rail and a half of the main track?

(Question objected to by def't's counsel.)

Ans. No, sir.

88 10th Q. State, if you know, what set the cars in motion on the switch and run them south as you saw them.

Ans. I don't know.

11th Q. How far was the car standing down next to the switch moved south by the other two cars you speak of running against it?

Ans. I don't know.

12th Q. What, if anything, was attached to and moving said freight cars south when you saw them?

Ans. Nothing as I saw.

13th Q. Were they box or open cars?

Ans. They were box cars.

14th Q. Were they the same box cars that you saw move south on said switch—the cars with which the passenger train collided or struck?

Ans. Yes, sir; they were.

15th Q. Did you notice carefully said cars running down as near the main track as you have stated? And, if so, state why.

Ans. Yes, sir; I particularly noticed it, because they run down so far, and it was so near train time.

16th Q. At the time these box cars you speak of were run down on the switch and the passenger train struck them, is it the same time of the accident in which Mr. Kelly's arm was hurt?

Ans. Yes, sir.

No cross-examination.

MARY WHETSEL.

89 STATE OF OHIO,
Logan County, ss:

I, James W. Steen, a notary public in and for the county of and State aforesaid, duly commissioned and qualified to administer oaths and take depositions, do hereby certify that the above named Emily Henderson and Mary Whetsel were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the foregoing depositions by them respectively subscribed were in the presence of said witnesses reduced to writing by me and written, and by said witnesses respectively subscribed in my presence, and were taken at the time and place specified in the enclosed notice, and that I am not a relative or attorney of either of said parties or otherwise interested in the event of said action and proceeding.

In testimony whereof I have hereunto set my hand and official seal this 11th day of March, A. D. 1879.

JAMES W. STEEN,
Notary Public within and for the County of Logan and State of Ohio.

Testimony taken March 31st, '79, in behalf of Kelly.

STATE OF OHIO,
Sandusky County, ss:

ISAAC N. HATTER, being duly sworn:

1st Q. State your name, age, occupation, and place of residence.

Ans. Isaac N. Hatter; age 57 last August; carpenter by trade; residence Fremont, Ohio.

2nd Q. What is your employment now, and what was it in Aug., 1877?

Ans. I was employed by the C. S. & C. R. R. Company as car-
90 penter and bridge builder both then and now.

3rd Q. State whether, on the 23rd day of August, 1877, the day on which Mr. Kelly was injured at Bellefountaine, you saw the car in which he was injured.

Ans. I got onto the train at Huntsville, about six miles north of Bellefountaine, [and was told by the conductor that there was a man hurt at Bellefountaine]. I could not say that was the car, because I did not see the man in it.

(That portion of the answer in brackets objected to by defendants' counsel.)

4th Q. What evidences of blood or stains did you see in that car, if any?

Ans. I saw a stain on the cushion, and also on the floor of the isle between the cushions, where something had been wiped up; there was no color of blood there.

5th Q. What train was it; which way was it going, and who was the conductor?

Ans. It was what we termed the mail train going north; I don't remember the number. The conductor was Rollo Grant.

6th Q. What time in the day did you board the train at Huntsville?

Ans. Between one and two o'clock, I think, in the afternoon.

7th Q. How many cars were there on the train, if you remember, and what were they?

Ans. I do not recollect.

8th Q. Which car was this that you have spoken of?

Ans. It was a regular passenger coach.

9th Q. State whether you examined the outside of that car, and if so, what injuries to the car did you observe, if any?

91 Ans. I stepped off of the platform at Belle Center, and noticed some two or three battens stripped off the front end of the car.

10th Q. What was the appearance as to whether the injury had been done recently or not?

Ans. It looked new, as if it had been done a short time before.

11th Q. What did you observe on the corner of the coach?

Ans. I did not see anything on the corner of the coach. The first I saw was the battens had been stripped off.

12th Q. On which side of the coach were the battens torn off, and on which side were the stains you have spoken of?

Ans. Upon the right hand side as you are coming north.

13th Q. How many battens were torn off, and where located on the side of the car?

Ans. I noticed only some two or three on the side near the front end.

Cross-examined by J. M. LENMON, att'y for defendant Farlow:

14th Q. Describe these battens you have spoken of.

Ans. I should judge 1¾ inches wide, about ⅜ of an inch thick, oval on the face, and put on perpendicularly, held on by brads. My impression is now that these strips were cut in the middle or near it by a horizontal strip on the side of the car, running at or near the bottom of the window.

Re-examined by counsel for Kelly:

15th Q. Were the battens torn off above or below the horizontal strip you speak of?

Ans. I think they were below the horizontal strip.

J. N. HATTER.

92 Also came JOHN B. RICE, who, being duly sworn, testifies and deposes as follows:

1st Q. State your name, age, profession, and place of residence.

Ans. John B. Rice; my age 46 years; profession, physician and surgeon, residing in the city of Fremont.

2nd Q. Are you acquainted with Sylvanus Kelly? If yea, how long have you known him?

Ans. I am, and have known him about 24 years.

3rd Q. State whether you saw him soon after the injury to his arm complained of herein, and if so, when and where with reference to the time of the injury?

Ans. I saw him the night after he received the injury, about midnight, at the hotel in Bellefomtaine.

4th Q. Had his arm been amputated at that time?

Ans. Yes.

5th Q. Did you see his arm and make any examination of it with reference to the injury?

Ans. I did that night, soon after I arrived there.

6th Q. You may describe the character and extent of the injury.

Ans. It was a compound commenuted fracture of the elbow joint, with extensive lacerations of the neighboring soft parts; the lower end of the humrus and ulna were commenuted.

7th Q. How far did the injury extend below the point of the elbow?

Ans. About two inches; it may not have been quite so far; I think not possibly more.

8th Q. Was there any laceration of either skin or flesh below a point two inches below the point of the elbow?

Ans. I think not.

9th Q. How far did the injury extend above the point of the elbow?

Ans. Four or five inches.

10th Q. Was there any laceration of either skin or flesh above that point?

93 Ans. There was no injury to the skin above that point, but owing to the traction made upon the muscles and deep structures, the tissues were lacerated higher up, so that Dr. Dunlap made the amputation higher up than he first expected to, as he told me.

11th Q. From examination of the arm could, and did, you determine the exact points of contact of the arm with the object causing the injury?

Ans. I inferred from the appearance that the parts presented that the elbow and the parts that were externally located above and below the joint was the position of the arm caught between the opposing forces.

12th Q. From your examination you may state whether the arm was extended or folded at the time it received the injury?

Ans. I formed the opinion that it was flexed.

JOHN B. RICE.

It is agreed by the parties that Dr. J. R. Reiff attended said Sylvanus Kelly from the time he came home, on the 6th September, to November 26th, 1877, for which he has charged said Kelly $25.

Thereupon came SARAH KELLY, who, being duly sworn, testifies and deposes as follows:

1st Q. State your name, age, and place of residence.

Ans. My name is Sarah Kelly; my age is 38 years; residence, Fremont, Ohio.

2nd Q. What relation are you to the plaintiff, Sylvanus Kelly?

Ans. His wife.

94 3rd Q. Are you acquainted with Dr. C. W. Dunlap?

Ans. I met him once and was introduced to him.

4th Q. Did you see him upon the occasion of his second visit to your husband at Bellefomtaine while he lay there, after the amputation of his arm?

Ans. I did.

5th Q. Where was you when he came?

Ans. In Mr. Kelly's room.

6th Q. State whether you remained there in Mr. Kelly's room with him and the doctor during the entire time that the doctor remained.

Ans. I did, all the time.

7th Q. How near did you remain to him and Mr. Kelly during this time?

Ans. Within six feet, most of the time nearer, never more than the length of the bed from them.

8th Q. Did you hear the conversation that passed between them?

Ans. There was no conversation passed between them during the whole time. He spoke to Mr. Kelly once, and Mr. Kelly bowed but did not answer him. I did the talking.

9th Q. Did Mr. Kelly say to him that his arm was laying in the window at the time it was injured?

Ans. He did not.

10th Q. What other person, if any, was in the room during the time of the doctor's second visit?

Ans. Mr. Heron and Dr. Cretcher.

Cross-examined by Mr. LEMMON:

12th Q. When did you reach Bellefountaine?

Ans. On what was called the midnight train, and arrived there

95 about midnight of the same day on which Mr. Kelly was hurt.

13th Q. How many times was young Dr. Dunlap in Mr. Kelly's room after you got there?

Ans. Only once to my knowledge.

14th Q. Could you repeat all the conversation Dr. Dunlap had there with you?

Ans. I could its nature, but not the words.

SARA KELLY.

The foregoing depositions of Isaac Halter, John B. Rice, and Sara Kelly were reduced to writing by me, respectively subscribed by them in my presence after they were severally sworn by me to testify the truth, the whole truth, and nothing but the truth.

M'ch 31st, 1879.

HOMER EVERETT,
Master Com'r.

Rebutting testimony on behalf of Sylvanus Kelly, plaintiff.

MONDAY, *April 7th*, 1879.

J. V. BEERY, being duly sworn, testifies as follows:

1st Q. State your name, age, and place of residence.

Ans. J. V. Beery; age, 44 years; residence, Fremont, Ohio.

2nd Q. State how long you have been accustomed to travelling on railroad cars?

Ans. About 23 years.

3rd Q. What do men of ordinary care and prudence while riding in railroad passenger cars with the windows open, generally do with regard to resting their arms on the sill or base of the windows while the cars are in motion?

96 (Objected to by counsel for John S. Farlow, receiver, because the same is irrelevent and incompetent, and should not be allowed to be put to the witness. Objection overruled, question allowed, and the ruling and admission of the answer excepted to by counsel for J. S. Farlow, receiver.)

Ans. It is a very common occurrence for passengers while riding in a passenger coach to rest their arms on the base or sill of the car window, when the window is open.

(Counsel for defendant Farlow moves to rule out the above answer on the same ground stated in objection to the question. Which motion is overruled, to which counsel for Farlow excepts.)

4th Q. Are you acquainted with the passenger coaches of the Cincinnati, Sandusky and Cleveland Railroad?

Ans. I am somewhat.

5th Q. You may state whether or not a person sitting in a seat of one of their passenger coaches next to the window can see whether the arm of a person sitting upright in the seat next in front of them with back against the back of the seat, shoulder against the corner of the window jam, head resting in hand, projects beyond the outside of the car.

(Question objected to by counsel for Def't Farlow. Objection overruled; Def't Farlow excepts.)

Ans. They cannot, unless the person behind should put their head out of the window; cannot see from inside the car.

5th Q. You may state what there is if anything to prevent a
97 person under these circumstances from seeing the arm projecting beyond the outside of the window.

Ans. The body and shoulders of the person in front prevent seeing the arm outside of the window, also the back of the seat in front would obstruct the sight. The thickness of the jam of the window would also prevent seeing it outside.

Cross-examination:

6th Q. Do you know how the window and window sill of car No. 9 of the C., S. and C. Railroad is constructed and arranged with reference to its adjacent seat?

Ans. Not noticing the number of the car on which I rode, I cannot say that I do.

7th Q. When did you ride upon a car of that road last?

Ans. On last Tuesday, April 1st, 1879, I think a distance of about 400 feet at Clyde, starting, that is, from the stone wall south to the platform.

8th Q. When did you ride on the cars of this road next before this occasion?

Ans. Perhaps two years, cannot say exactly.

Re-examination by counsel for Kelly:

9th Q. You may state how the diagram of the car seat and window mentioned in the deposition of Frank Woodbridge herein, marked "Sec. passenger car No. 9, Perry Norton, notary public," here presented you, compares with construction of the car-seat and window you examined on the first of April instant.

Ans. I can see no difference between the diagram of passenger
98 car No. 9, I now look at, and the construction of the seat and car window of the car I rode on April 1st, 1879.

Recross-examination:

10th Q. What is your present occupation?

Ans. Manufacturer and dealer in hoops and lumber.

11th Q. Did you measure in the car in which you rode last Tuesday the distance from the sill of the window to the cushion of the seat?

Ans. I did not.

12th Q. Did you measure the distance from the seat to the top of the back of the seat?

Ans. I did not.

13th Q. Did you make any measurements?

Ans. None, except with the eye. I made an estimate, with the eye, of the inside jam or sill, and the upright board which the window sash fits down on to.

J. V. BEERY.

Also came DAVID JUNE, who, being duly sworn, testified as follows, and who was examined heretofore in chief:

1st Q. How long have you been accustomed to riding in R. R. cars?

Ans. From 25 to 30 years.

2nd Q. What was the last trip you made?

Ans. From the 18th to the 29th of March last, and from Fremont, Ohio, to Nashville, Tennessee, and back again.

3rd Q. What do men of ordinary care and prudence, while riding in railroad passenger cars, with the windows open, generally do in regard to resting their arms on the sill or bars of the window, while the cars are in motion?

99 (Objected to by counsel for John S. Farlow, because the same is irrelevant and incompetent, and should not be allowed to be put. Objection overruled, and the admission of the answer excepted, as also the overruling of the objection, which is objected to by said Farlow's counsel.)

Ans. If occupying the seat alone, they usually rest their elbow on the window sill. This has been my experience.

(Counsel for defendant Farlow moves to rule out the above answer. Motion overruled, and Farlow's counsel excepts.)

5th Q. How is it when two persons are sitting in the same seat?

(Question objected to as irrelevant and incompetent. Objection overruled. Question allowed, and ruling and answer excepted to by counsel for defendant Farlow, receiver.)

Ans. When engaged in conversation the one next to the window are not so liable to rest their arm upon the window as when sitting alone.

6th Q. Are you acquainted with the passenger coaches of the C. S. and C. R. R. Company?

Ans. I am, somewhat.

7th Q. When a person is sitting in the seat of one of their passenger coaches, in an upright position, next the window, with the window open, with their back against the back of the seat, right shoulder resting against the edge of the jam of the window, their right arm resting in the window, head resting in their right hand, what is the fact as
100 to a passenger sitting in the seat next in rear of such person, facing the back of such person, and next to the window, being able to see whether or not such person's arm is projecting outside of the window?

(Question objected to as incompetent by counsel for defendant Farlow. Objection overruled. Question allowed. Ruling excepted to by counsel for Farlow.)

Ans. Should not think they could see, sir; not while the head was in the car, and the person remained in the seat.

8th Q. State why they could not.

(Last objection, ruling and exception repeated.)

Ans. The thickness of the car's side, jam of the window, shoulder and body of the person, would prevent the person in the rear from seeing the arm and elbow of the person in front resting the arm upon the window sill.

DAVID JUNE.

Also came B. F. EVANS, of lawful age, who, being by me duly sworn, testifies as follows:

1st Q. State your name, age, place of residence and occupation.

Ans. Benjamin F. Evans is my name; age, 39 years; residence, Fremont, Ohio; occupation, insurance agent, at present.

2nd Q. What experience have you had in riding in railroad cars, and noticing the conduct of passengers therein?

Ans. Well, I frequently ride on the cars during the different
101 seasons of the year, and I notice the conduct of passengers.

3rd Q. What do men of ordinary care and prudence, while riding in railroad passenger cars, sitting in seat next to window, with window open, generally do, in regard to resting their arms in the window while the cars are in motion?

(Counsel for Farlow objects to the question as irrelevant and incompetent. Objection overruled. Answer admitted. To which ruling and answer counsel for Farlow excepts.)

Ans. Well, men as a general thing rest their elbow on the window sill, sometimes with the hand dropping down, and sometimes with the head resting on the hand.

(Motion to rule out this answer by counsel for Farlow. Motion overruled, and exception taken.)

4th Q. State whether you are acquainted with the passenger cars of the C. S. and C. Railroad Company.

Ans. Not very well acquainted.

5th Q. Where a person is sitting in a seat of one of their passenger coaches, in an upright position, next the window, with the window open, with their back against the back of the seat, their right shoulder resting against the jam of the window, their right arm resting in the window, their head resting on their right hand, you may state whether or not a person sitting in the seat next in rear of such person, on the same side of the car, and next the window facing the back of such
person, could see whether or not the arm of such person pro-
102 jected beyond the outside of such car.

(Question objected to by counsel for Farlow as irrelevant and incompetent to be put to the witness. Objection overruled, question allowed, and exception taken by counsel for said Farlow.)

Ans. Owing to the thickness of the car's side, at the window, I do not believe it possible.

6th Q. What other obsticles, if any, would prevent such person from seeing?

Ans. The jam of the window, the top of the back of the seat; it is some three or four inches from the window, and a person leaning back against the seat could not possibly protrude the arm through the win-

dow far enough for a person sitting in the seat in the rear to see the arm.

7th Q. Do you mean the arm extended or flexed?

Ans. With the elbow resting upon the window-sill and the head resting on the hand.

B. F. EVANS.

Plaintiff Kelly recalled Mrs. KELLY, who has before testified, who testified as follows;

Q. Do you know Mrs. Kittie Allen, who testified in this case?

Ans. I met her once, on the occasion of her giving testimony here.

Q. You may state her height.

Ans. I should think she was about five feet four inches high; she is not as tall as I am, and I am five feet five inches.

Cross-examined:

Q. How does she compare with you in size otherwise?

Ans. She is not so stout; I weigh 148 lbs.; she, I should judge,
103 from 125 to 130 lbs.

MRS. S. KELLY.

The above-named John V. Beery, David June, B. F. Evans, and Mrs. S. Kelly were severally sworn by me to testify the truth, the whole truth, and nothing but the truth, and their foregoing depositions were written by and signed them in my presence.

March 31st, 1879.

H. EVERETT,
Master Com'r.

(Here follow 2 diagrams marked page 104 & page 105.)

106 *Exhibit "Time Table, No. 1."—Percy Norton, notary public.*

CINCINNATI, SANDUSKY AND CLEVELAND RAILROAD, J. S. FARLOW, RECEIVER.

1. TIME TABLE. 1

To take effect June 24th, 1877, at 12 o'clock noon.

CHAS. HOWARD, *Superintendent, Springfield, O.* D. W. C. BROWN, *General Manager.*

General train rules.

The rules and regulations of this company are made for the safety and economy of the company, and are believed to be for the interest and safety of employees as well, and a strict compliance with them will be required of all.

* * * * * * *

Rule 185. All trains will approach stations and wooding places with great care, under the supposition that a train is to be met.

* * * * * * *

107 *Trains southward bound.*

No. 5.—Express mail, daily except Sundays.
12. 10)
12. 30)

Trains northward bound.

Names of stations.	Distances.	Express mail, No. 6.
Arr.		12. 55)
Bellefontaine, "	97. 8 from Sandusk'	12. 27)
West Liberty, "	7. 8 " Bellefontaine	12. 12
Lippincott's	4. 3 " W. L	*12. 02
Saratoga	2. 6 " L	*11. 56
Urbana	3. 3 " S	11. 48
Bowlusville	6. 1 " U	*11. 35
Fremont	2. 5 " B	*11. 30
Engine-House	4. 6 " S	*11. 20
Springfield	1. 2 " E. H	11. 15

* Trains do not stop.

(Here follows diagram, marked page 107½.)

108 *Defendant's testimony.*

Depositions of sundry witnesses taken before me, Perry Norton, a notary public, within and for the county of Clark, in the State of Ohio, by agreement of the parties, at the law office of S. A. Bowman, in the city of Springfield in said county, on the 19th and 20th days of February, A. D. 1879, to be read in evidence on behalf of John S. Farlow, receiver, on the hearing before Homer Everett, of the claim of Sylvanus Kelly, for damages, referred to him as special master commissioner by the circuit court of the United States for the northern district of Ohio, in an action pending therein, wherein John C. Pratt et al. are plaintiffs, and the Cincinnati, Sandusky and Cleveland Railroad Company et al. are defendants. Present, R. P. Buckland, esq., and Joseph Bartlett, esq., for Sylvanus Kelly, and S. A. Bowman for the receiver.

FRANK WOODBRIDGE, being duly sworn, deposes and says:

1. Quest. What is your name, age, residence, and occupation?

Ans. My name is Frank Woodbridge; age, 31 years; residence, Springfield, Ohio; occupation, civil engineer, and as such am in the employ of C. S. & C. Railroad Company.

2nd Q. Please examine the plat marked "Plat of Bellefontaine side track," and state what it represents.

Ans. It represents the track of the C. S. and C. Road, south of the connecting track, between the track of the C. C. C. and I. and the C. S. and C. side track. The track in red represents the tracks of the
109 C. C. C. and I. R. R. Co.; and the track in black represents the tracks of the C. S. and C. Railroad Company.

Q. 3rd. What is the length of the C. S. and C. side track represented on the plat?

Ans. About a thousand feet from end to end.

4th Q. What is the greatest distance of the side track from the main track, from center to center?

Ans. Between 13 and 14 feet.

5th Q. How long have you been engaged as civil engineer with railroad companies?

Ans. About nine years.

6th Q. How is this side track constructed with reference to the manner in which they are usually constructed by railroad companies?

Ans. About as the general run.

7th Q. How soon were you at this side track after the accident to Sylvanus Kelly complained of in this case?

Ans. The next day at 10 o'clock a. m.

9th Q. Were there any cars standing on the side track of the C. S. and C. at this time?

(Objected to as irrelevant.)

Ans. There were none, to the best of my recollection.

9th Q. Did you see the car which it was said had stood on the side track, at the south end of it, at the time of the accident?

(Objected to.)

Ans. Yes, sir.

10th Q. Describe the car and state where you saw it.

(Objected to.)

Ans. It was a box car, No. 41, the St. L., V. & T. H. R. R. It was on the main track of the C. C. C. and I, near the freight house.

110 It was being switched into a freight train standing there at that time. This car had a portion of the roof splintered at one corner, and a portion of the corner of the bottom knocked off.

11th Q. Whose train was handling the car when you saw it?

(Objected to.)

Ans. It was a freight train of the C. C. C. and I. Railroad. I didn't know any of the train men.

12th Q. Did you see the cars of the C. S. and C. R. R., which composed the train upon which Mr. Kelly was hurt, after the accident; and if so, when?

Ans. I did not see them.

13th Q. Had it rained any part of the 23rd of August, 1877, the day on which Mr. Kelly was hurt at Bellefontaine?

Ans. It had rained, I was told, during the morning; I was not there myself.

(Answer objected to as hearsay.)

14th Q. Did it rain any there the next day, the 24th?

Ans. I don't think it did.

15th Q. Did you examine the side track of the C. S. and C. shown on the plat, at the south end thereof, to see if there were any indications on or about the track, as to whether a car had been moved thereon after a rain had occurred, and did you find any; and, if so, what were they?

Ans. I did make the examination and found the dry spots on the ground [where I was told these cars had stood during the rain of the previous day.]

(That portion of the answer inclosed in the brackets objected to.)

16th Q. How far was the first dry spot from the frog in the

111 connection of the side track with the main tracks at its south end?

Ans. It was not less than a hundred feet.

17th Q. How did the length and width of this dry spot compare with

the length and width of the box car No. 41, already referred to by you?

Ans. I did not examine as to that.

18th Q. How many of these dry spots were there on the side track?

Ans. There were three. Two near the south end, and one near the north end of the side track.

19th Q. Have you since answering question 16th looked at your report touching this accident; and, if so, are you enabled to more accurately state the distance of the first dry spot from the frog at the south end of the side track?

Ans. Yes; 135 feet.

20th Q. Please state about the extent and shape of these dry spots.

Ans. I can't give an answer to that except that the dry spots were there.

21st Q. Did you make a plat of them or the train?

Ans. I did.

22nd Q. To whom did you deliver it?

Ans. To the superintendant Chas. Howard.

22rd Q. Do you know where it is now?

Ans. I do not.

24th Q. Can you give us from recollection some idea of the length of these dry spots?

Ans. I cannot.

25th Q. Please examine the paper now shown you; state what it is, and have the notary file it with your deposition.

Ans. It is a profile of the main track and side track of the C.
112 S. & C. R. R. shown in the plat, marked plat of Bellefontaine side track, south from the C. C. C. and I. crossing for 3,660 feet. I have had the notary mark this profile, "Profile of main and side track of C. S. & C. R. R. south of C. C. C. and I. R. R. crossing at Bellefontaine."

26th Q. Please state the grade of the said track for the first 200 feet from its south end northward?

Ans. Very nearly level; it is a mere fraction of a foot.

27th Q. State the grade of the next 200 feet of the said track northward.

Ans. A little over a foot.

28th Q. State the grade of the balance of the side track.

Ans. About the same as that of the main line, which is about 18 ft. to the mile descent toward the south.

29th Q. Have you a plat of a section of one of the windows and seats of passenger coach No. 9, of the C. S. & C. R. R.?

Ans. I have, and produce it to be filed, marked section of passenger car No. 9.

30th Q. When, and whom was it made by?

Ans. It was made by myself yesterday morning.

31st Q. What does that portion of it which is marked in red figures 1⅞ represent?

Ans. I suppose that it is properly the window sill.

32nd Q. Do those figures 1⅞ mean inches or feet?

Ans. They mean 1 inch and seven-eight's of an inch.

33rd Q. What does that portion marked 5 in. represent?

Ans. It is five inches, and denotes the distance from the window-sill to the sash.

34th Q. What is the material of this space which is marked 5 inches in height made?

Ans. It is a plain board probably ⅞ of an inch thick.

35th Q. When the sash is shut down, is it on the outside or inside of this board?

113 Ans. On the outside, the board projecting far enough up above the bottom of the sash when the window is shut down to form a rabbitt for the bottom of the sash.

36th Q. What does the figure one in red on the plat show?

Ans. One inch, the width of the arm of the seat.

37th Q. Are the seats and windows of this car uniform in construction, as respects the parts shown in the plat, or do they vary?

Ans. They are uniform.

Adjourned at 12 m., to meet at 1.30 p. m.

Met pursuant to adjournment.

Cross-examination by plaintiff's attorney:

38th Q. Where was this car No. 9, at the time you made the measurements for the draft for the seat and window?

Ans. In front of the depot building in Springfield.

39th Q. Have you any personal knowledge of this being the same car plaintiff was in at the time of his injury?

Ans. I have not.

40th Q. Were there any evidences upon the exterior of the car of its having collided with anything else?

Ans. I didn't look for any.

41st Q. Have you seen the same car you took the measurements of since; and if so, where?

Ans. I saw it again this noon, at the same place.

42nd Q. Was not your attention called to the fact whether any marks upon the exterior of the car bearing evidence of its having collided with another object on the right of the car in the direction it was moving at the time Kelly received his injury?

Ans. My attention was called to it; I don't know which way
114 *way* it was moving; my attention was called to some scratching on the north side of the car as it stood to-day.

43rd Q. At the time you looked at the car to-day, were there any evidences of injuries to either exterior corners of the car?

Ans. None that I could see.

44th Q. Are you acquainted with the direction of the road by the points of the compass, between the depot at Bellefontaine and a distance half a mile south?

Ans. Yes, sir; it is about between 5 and 10 degrees east of north.

45th Q. On which side of the track looking north is the switch?

Ans. On the right hand side.

46th Q. Were a car passing north, upon which side of the car, if at all, would the car receive an injury from an object upon the switch?

Ans. Upon the right hand side.

47th Q. Now, did you discover any such injury on the car you examined to day, as would be occassioned by another box car on the switch?

Ans. None, as the car stood on the track to day.

48th Q. What is the thickness of the wall of the car through the window, measuring over the window sill?

Ans. Six and one-half inches.

49th Q. How high is it from the seat to the bottom of the sash of the window?

Ans. Between 15 and 16 inches.

50th Q. What is the distance from the south end of the switch south to the curve of the main track?

Ans. 1,920 feet (nineteen hundred and twenty.)

51st Q. What is the extreem' elevation from the lowest point just north of the curve in the main track to the C., C., C. and I. crossing, north?

Ans. Fourteen feet.

115 52nd Q. What is the distance between these two points?

Ans. Thirty six hundred feet.

53rd Q. What is the extreme elevation from the south end of the switch to the crossing of the C., C., C. and I.?

Ans. About three feet.

54th Q. And what is the distance?

Ans. It is about 1,075 feet.

Re-examination:

55th Q. Were Mess. Buckland and Bartlett with you when you examined the car to-day?

Ans. Yes, sir.

F. WOODBRIDGE.

DAVID BOYD, being duly sworn, deposes and says:

Q. 1st. Please state your name, age, residence, and occupation.

Ans. My name is David Boyd; age, 58 years; residence, Bellefontaine; and occupation, partly station agent for C., S. & C. R. R. Co.

2nd Q. How long have you been station agent for said R. R. company at Bellefontaine?

Ans. Sixteen years the first of next April.

3rd Q. How long have you known the side track at the C., C., C. and I. crossing at Bellefontaine, as shown in black on exhibit marked "Plat of Bellefontaine side track"?

Ans. Over 20 years.

4th Q. How long has it been in use there as a side track in its present situation?

Ans. Over 20 years.

5th Q. During the time you have known said track, has any

116 accident ever occurred by a train colliding with a car or any other object on said side track?

Ans. I have never known of any except in the case of Mr. Kelly.

6th Q. Were you at the station the 23rd day of August, 1877, at the time of the arrival of the train upon which Mr. Kelly was hurt?

Ans. I was.

7th Q. Do you remember at what time the train on the C., S. and C. R. R. arrived at Bellefontaine station, on which Mr. Kelly was hurt?

Ans. I cannot give you the exact minute, but think it was between 12 and 1 o'clock.

8th Q. Did it rain that morning; and, if it did, when did it begin, and when did it quit raining?

Ans. According to my recollection it commenced shortly after 9 o'clock and quit after eleven.

9th Q. Did you go down to the side track and examine it after the arrival of the train on which Kelly was hurt?

Ans. I did, sir.

10th Q. How soon after?

Ans. It must have been probably half an hour. I was engaged in looking after Mr. Kelly a little before I went down there.

11th Q. When you went down, did you notice any indication upon the

track as to whether the car which had caused the accident had changed its position recently before the train upon which Mr. Kelly was came or not; and, if yea, what was it?

Ans. I thought I did, opposite Kingsbury's place, where an alley abuts against the track; there was a dry spot; all around was wet. I
117 took that dry spot to be the location of the car during the rain.

12th Q. How far was this dry spot on the side track northward from the south end of the side track?

Ans. I did not measure it, but according to the best of my judgement it was about 8 rods from the frog.

13th Q. What was the condition of the side track from this dry spot to the main track or the south end, as to being wet or dry?

Ans. It was wet from that dry spot to the main track; that is, there was no other dry spot between that and the main track.

14th Q. What was the size of this dry spot as compared with one which would be left by a box car?

Ans. I think about the same; I didn't measure it.

15th Q. What kind of a car was it which stood at the south end of the side track at the time of the accident to Kelly?

Ans. It was what we call a foreign empty box car. I am not positive as to the initials on the car, but I think it was a Terre Haute car.

16th Q. What became of it after the accident?

Ans. The C., C., C. and I. folks took it away the next day.

17th Q. Did you examine it after the accident?

Ans. Yes, sir; I examined it to see what was the damage.

18th Q. What indications had it of having come in contact with the passing train on the C., S. and C. R. R.?

Ans. The southwest corner of the roof of the car that projects over was bruised, and the side of that end of the car had scratches on from the south end, extending back probably about 8 feet on that side of the car, the scratches running out to nothing.

118 19th Q. To what extent was the southwest corner of the roof of the car bruised?

Ans. There was splinters knocked off and bruised, but no part of the roof knocked off aside from the splinters.

20th Q. Was there more than one bruise on this southwest corner?

Ans. I observed no other bruise or scratches, only what I have mentioned.

21st Q. Was this bruise a slight or a deep one?

Ans. I cannot describe except as I have done. The corner of the roof was bruised, splinters being knocked off, the indentations of the scratches were deeper at the south end of the car and run out to nothing as I have stated.

22nd Q. When do you remember of having seen this box car standing on the side track before the accident?

Ans. I saw it the evening before.

23rd Q. Where was it standing then, with reference to the dry spot you have already described?

Ans. It was standing right there, opposite Kingsbury's house.

24th Q. Had you any knowledge or information of its having been moved before the arrival of the train in Bellefontaine upon which Kelly was hurt?

Ans. I had not.

25th Q. How many trains of cars passed over the C., S. and C. Road at that point on the same day that Kelly was hurt, before the train passed the side track on which he was hurt?

(Objected to.)

Ans. There were two passenger trains and a freight.

26th Q. Please state about the time of day which they severally passed this side track.

119 Ans. I cannot give the exact time; those three trains came close together, within a short time of each other; I think about 8 or 9 o'clock of the forenoon of that day.

27th Q. Were either of these trains in any manner interfered with or obstructed in passing this side track?

(Objected to.)

Ans. No, sir.

28th Q. What trains passed over the road by this side track the night before the day on which Kelly was hurt?

(Objected to.)

Ans. Three passenger trains. I can't say positively whether there were any freights that night or not.

29th Q. Was any train at any time previous to the accident to Mr. Kelly, within your knowledge or information, in any manner affected or interfered with by a car or any other object on that side track?

(Objected to.)

Ans. No, sir.

Cross-examination:

30th Q. How many persons were there in the employ of the company, including yourself, in and about the depot and depot grounds at Bellefontaine on or about the 23rd day of August, 1877?

Ans. There were six.

31st Q. Were there any trains of the company in and upon the depot grounds at that time, aside from the one upon which Mr. Kelly was?

Ans. Mail train No. 5 was there, passing south.

32nd Q. How long had it arrived previous to the arrival of the train upon which Mr. Kelly was?

Ans. About twenty minutes; I am not positive.

33rd Q. Whereabouts was it standing before and at the time

120 of *of* the accident?

Ans. On the north end of this same side track.

34th Q. How many cars including the locomotive was there in the train on the side track going south?

Ans. There was five including the locomotive.

35th Q. Did you see that train when it went on to the side track?

Ans. I can't say that I did. I was in the ticket office at the time.

36th Q. Is it not true that there was a box car standing on or near the north end of that same side track at that time?

Ans. My recollection is that there was two near that end.

37th Q. Is it not true when passenger train No. 5 went on to the side track, it pushed these two cars along on the side track to give room for it?

Ans. By my own knowledge I can't say that it did, but from the location of the cars in the morning it would have to do so to get in.

38th Q. When did you next see these two cars after No. 5 went on to side track?

Ans. When I went down to look at the car which had been struck.

39th Q. Where were they at that time with reference to the car which was struck?

Ans. I think they were together.

40th Q. And how far at that time was that car which was struck from the south end of the switch?

Ans. I should think it was three or four rods from the frog. They had been moved from where it was struck.

41st Q. Had it been moved to other position by force of the collision, or by other means?

Ans. By other means, I believe.

42nd Q. How long was it after the collision that you first saw
121 these cars?

Ans. As near as I can recollect about half an hour.

43rd Q. About how much down grade is that switch from where the two cars stood in the morning to the south end of the switch?

Ans. I cannot answer that question. I never measured. It is down grade for a part of the distance, but how much I cannot tell.

44th Q. How many persons were there on this No. 5 who are employees of the company?

Ans. I cannot answer positively, but suppose there would be four or five.

45th Q. Give me the name of the engineer and conductor of that train.

Ans. I am not now able to give you the name of the conductor. The engineer was Horace Brooks.

46th Q. Where was Kelly when you first saw him after his injury?

Ans. In a room in the Branham House.

47th Q. Did you see the passenger-train upon which Kelly was, approaching from the south?

Ans. I did not, for I was in the ticket office at the time. The train upon which Kelly was was No. 6.

48th Q. Where was number six when you first saw it upon its arrival that day?

Ans. Standing at the depot.

49th Q. How long was this after its arrival?

Ans. I saw it coming in through the ticket-office window.

50th Q. Did you go out to the train after its arrival, and, if so, how long after?

Ans. Shortly after arrival of train a man came into the office
122 and informed me that a man was hurt. I immediately went out to look after the man, and paid little attention to the train. My attention was directed to Kelly.

51st Q. How long did No. 6 remain at Bellefontaine depot that day?

Ans. I can't say positive, but think about 20 or 25 minutes.

52nd Q. Was No. 6 on time on its arrival or behind?

Ans. I think it was about on time.

53rd Q. Did you go out to look at No. 6 before it left?

Ans. I was so excited about the man I didn't go to see No. 6 specially.

54th Q. How many box or freight cars were there on this side track on that day?

Ans. Just three.

55th Q. What were they loaded with?

Ans. My recollection is they were all box cars and all empty.

56th Q. Have you no recollection of an accident occurring previous to Mr. Kelly's injury to a passenger, in consequence of the proximity of a car at the south end of this same switch to the main track?

Ans. No recollection; never heard of one.

57th Q. Is it not true that you have experienced some trouble there

at the depot, prior to Kelly's injury, in consequence of the tendency of cars to run down the grade of that switch?'

Ans. I have had some difficulty in taking cars up that grade, and I found a car at one time too close to the main track, and I pushed it up. This is all. I never knew of any accident.

58th Q. Have you not been aware, for a number of years, that there is a strong tendency of cars to run down the grade of that switch?

123 (Objected to for the grade itself shows whatever tendency there would be.)

Ans. There is one part of that track that if a car is standing with a brake on, and that brake suddenly thrown off, a car may start and run south a distance. According to the best of my knowledge of that track, a car left standing without the brake being set, would not move of itself without a concussion of that sort.

59th Q. Is it not true that on a portion of that side track cars standing without the brake, set will be moved by high winds?

Ans. I never knew such a case.

60th Q. What protection, if any, has ever been placed across the rail of that side track or otherwise, prior to the date of Kelly's injury, to prevent cars from running south on the side track and getting in close proximity to the main track?

(Question objected to.)

Ans. Nothing. There has been times when I have put a stone on the track to stop a car; would do it rather than to brake it.

61st Q. What protection has been placed there since the accident to Kelly?

Ans. There has been a locked block placed on the track.

62nd Q. At what point on the side track?

Ans. It is at the southern end just before the curve tacks into the main track.

63rd Q. You have spoken of seeing a car in too close proximity to the main track at the south end of the side track before the accident to Kelly; when was this?

124 Ans. Cannot answer definitely, but it was some months before.

64th Q. How came that car there?

Ans. I cannot tell.

65th Q. Where was it last before you saw it in this close proximity to the main track?

Ans. Cannot give the precise location, but it was some rods north?

66th Q. Standing or moving?

Ans. Standing.

Re examination:

67th Q. Give the names and positions of the six persons you have said were employed about the depot in Bellefontaine.

Ans. J. W. Byers, flagman; Andy Brahamy, telegraph operator; T. H. Boyd, clerk; John Caskey, baggage and freight man. I think W. M. Boyd was night clerk at that time—I am not positive—and myself as agent.

68th Q. Are they all still at Bellefontaine in the employ of the company?

Ans. All but Boyd; he is in Pittsburgh.

69th Q. You have stated in answer to cross-question 41 that you believe that the box car was moved from the place where it stood at the time of the accident by other means than the force of the collision. To what means do you refer by "other means"?

Ans. I refer to No. 5, the passenger train that was in there; what I mean by this is, that I believe the men on No. 5 coupled up and pulled those cars north.

70th Q. When was the lock block to which you refer to in your cross-examination placed upon the side track?

Ans. Cannot say definitely, but some time after Mr. Kelly's
125 accident.

71st Q. Was it not put on about November or December, 1877?

Answer. As I said before, I cannot say definitely. It was some time after.

DAVID BOYD.

JOHN CASKEY, being duly sworn, deposeth and saith:

1st Q. Please state your name, age, residence, and occupation.

Ans. John Caskey; age, 50 years old; my occupation, baggage master at Bellefontaine.

2nd Q. How long have you been in the employ of the company at that place?

Ans. Between 24 and 25 years; along there some place about 25 years.

3rd Q. Have you been employed by the company during all that period?

Ans. Yes, sir.

4th Q. In various capacities?

Ans. Yes, sir.

5th Q. Are you familiar with the side track south from the crossing of the C., C., C. and I. R. R., shown in the plat, and marked on the plat Bellefontaine side track?

(Shows witness plat.)

Ans. Yes, sir.

6th Q. How long have you known it?

Ans. Ever since I worked there.

7th Q. Has it been in the same situation that it is now during all that time?

Ans. Yes, sir; sometimes it gets in rotten ties and they had to be repaired.

126 8th Q. Prior to the time Sylvanus Kelly was hurt, in August 23rd, 1877, do you know of any obstruction to or interference to passing trains by cars or other objects standing on the side track?

(Objected to.)

Ans. No, sir; never did.

10th Q. Were you at the depot when the train arrived on the 23rd of August, 1877, on which Mr. Kelly was?

Ans. Yes, sir; I was taking out baggage at the station.

11th Q. Had it rained that morning; if so, when did it begin, and when did it quit?

Ans. I cannot tell the exact time it commenced; it commenced early in the forenoon, and it rained until eleven o'clock or a little after eleven.

12th Q. What was the number of the train on which Mr. Kelly was?

Ans. No. 6 going north.

13th Q. Did you examine the side track after No. 6 came in?

Ans. Yes, sir; after we got clear of the trains Boyd asked me to go down; we went down together.

14th Q. Did you see any indications that the box car at the south end of this side track had moved from the place where it occupied while it rained that morning? if so, state what they were.

Ans. Mr. Boyd and me walked down the main track, the side track

was on our left. We seen where the box car had been standing. It was a dry spot. We went on until we could see where it was struck. I went back up there to where the box car had been standing while it was raining. It must have been between three and four car lengths from where it was struck to where it had been standing. I did
127 not measure it, but to the best of my knowledge that was the distance.

15th Q. Can you locate the place where the dry spot was there, by any house or other object adjacent to the side track?

Ans. Yes; there was a house standing right opposite to the place; do not suppose it is more than 20 feet from the end of the ties to the house.

16th Q. Who lived in the house at that time?

Ans. Mr. Kingsbury; he has got some boys there.

17th Q. Was this box car that came in contact with the train loaded or unloaded?

Ans. It was empty.

18th Q. Of what kind of wood was the roof and sides made?

Ans. I do not know; they were generally pine; did not examine it close.

19th Q. Had you noticed the box car on the side before the accident?

Ans. No, sir; I did not.

20th Q. What indications were there upon it of its having been in contact with a passing train?

Ans. There were some scratches on it.

21st Q. Did you notice the condition of the cars on No. 6, upon which Kelly was, after it arrived at the station?

Ans. No, sir; I did not examine them.

Cross-examination:

22nd Q. Did you see any box car on that side track that day at any time before the accident?

Ans. Two at the north end of the side track.

23rd Q. Did you see the third one near the south end of the side track at any time before the accident?

Ans. No, sir.

128 24th Q. What time in the day was it that you saw the two cars near the north end of the side track?

Ans. No. 2 came in between eight and nine o'clock. I stood on the platform. I saw the cars go on it and the brakesman set the brakes; that is, on the north end.

25th Q. What was No. 2, passenger or freight?

Ans. Freight.

26th Q. To which does it belong?

Ans. To the C., S. and C. Railroad.

27th Q. What time did number five arrive there from the north that day?

Ans. About twelve o'clock.

28th Q. Did No. 5 side track when it came in?

Ans. Yes, sir.

29th Q. On what side track?

Ans. It side tracked on the south side track. It headed in on the north end.

30th Q. What direction does the main track of the C., S. and C. R. R. run there at Bellefontaine?

Ans. It runs north and south.

31st Q. How could the side track be on the south, then?

Ans. We have side tracks on the north side on the south side of the station.

32nd Q. Do you mean the side track on the south of the depot?

Ans. Yes, sir.

33rd Q. Did not that train move these two box cars there to make room for itself?

Ans. Do not know; did not see.

34th Q. Did you see the train when it came in on the side track and took its position there?

Ans. I see them in, but did not see them push in the cars there. They headed in.

129 35th Q. Did you take notice of these two box cars after that and before the accident to Kelly?

Ans. I did not take notice to the box cars after the brakeman set the brakes. I saw them set the brakes and make them secure, and paid no further attention.

36th Q. How long did No. 5 get there before No. 6 arrived there that day?

Ans. Well, I cannot tell; about ten minutes.

37th Q. Was No. 6 on time that day?

Ans. Yes, sir; as near as I can tell.

38th Q. How long did No. 6 remain there that day?

Ans. I can't answer that question; their time is 20 minutes.

39th Q. Did you see Kelly?

Ans. No, sir; I did not.

JOHN CASKEY.

JOHN W. BYERS:

1st Q. Please state your name, age, residence, and occupation.

Ans. Age, 50 years; name, John W. Byers; occupation, flagman at the railroad crossing at Bellefontaine.

2nd Q. How long have you been engaged in that capacity?

Ans. About 3½ years; three years last August.

3rd Q. Do you remember the occasion when Sylvanus Kelly was hurt on the 23rd of August, 1877?

Ans. I do.

4th Q. Did you go down to the side track of the C., S. and C. road, south of Bellefontaine, after the accident?

Ans. I did.

5th Q. Did you see the box car with which the moving train had come in contact after the time of the accident?

Ans. Yes, sir.

130 6th Q. What was the roof and frame made of?

Ans. Could not answer as to the frame. The sides were pine; the roof, I think, was pine.

7th Q. What indications did the box car have of having been in contact with a passing train?

Ans. The side just at the upper corner of the car was splintered up some, a little of the molding knocked off.

8th Q. Had it rained the morning of the accident; and, if so, about what hour did it begin, and what time did it quit?

Ans. I do not remember the time it began; quit about between ten and eleven; perhaps as late as eleven o'clock.

9th Q. Did you go down to the south end of the side track after the accident?

Ans. I did.

10th Q. Did you see any indications upon the track where the box car which caused the accident stood till the time of the rain; and, if so, what was it?

Ans. I seen a dry spot where the car had stood while it was raining, and it had been moved after it quit raining.

11th Q. How far was this dry spot on the side track from the south end of the side track?

Ans. I could only guess at that; about 140 to 150 feet.

12th Q. Had you seen this box car on the side track before the accident?

Ans. I had not.

Cross-examination:

12th Q. What were you doing there at that time?

Ans. Attending to my duties as flagman where the C., S. and C. road crosses the C., C., C. and I. road.

14th Q. Was that north or south of the depot of the C., S. and C. road?

131 Ans. It was at the south of it.

15th Q. Is it your duty to watch trains and flag them?

Ans. Yes, sir.

16th Q. Did you see No. 5 when she came in that day from the north

Ans. I can't say that I did; it was not my duty to do so until she came into the depot.

17th Q. You only flagged trains south of the depot, then?

Ans. Yes, sir; none north of it.

18th Q. Did you see No. 6 when she was approaching the depot that day?

Ans. Yes, sir.

19th Q. Whereabouts was No. 6 when you first saw her from the C., C., C. and I. crossing?

Ans. About 400 or 500 feet.

20th Q. Whereabouts was you at the time you first saw No. 6?

Ans. I was at the flag house.

21st Q. Where is the flag house with reference to the crossing of the C., C., C. and I. with the C., S. and C?

Ans. Right at the crossing.

22nd Q. What distance of straight track is there on the C., S. and C. road south of the C., C., C. and I. crossing?

Ans. Very little, if any; not sure that there is any.

23rd Q. Is it not true that there is at least 1,920 feet of straight track before you begin the curve?

Ans. No, sir.

24th Q. You swear it?

Ans. Yes, sir.

25th Q. I will ask if there is not that distance between the south switch to the curve on the main track—1,920?

Ans. I can't say.

26th Q. Had you been watching for the train up to the time you stated that you did?

132 Ans. Yes, sir; because it is my habit of doing so—do not remember that particular day.

27th Q. Had it reached the south end of the switch when you discovered it?

Ans. Yes, sir, and passed it. I can't see the south end of the switch from the flag-house.

28th Q. On which side of the C., S. and C., looking north, is your flag-house?

Ans. On the east side.

29th Q. What is the obstruction to the view from the flag-house to the south end of that south switch?

Ans. Trees.

30th Q. On which side of the track are the trees?

Ans. West side.

31st Q. Could you see any portion of the south end of the side-track from your flag house from the position you occupied at the time?

Ans. Cannot see it from the outside.

32nd Q. Do you know how many box-cars there were on that side-track that day?

Ans. Three.

33rd Q. At the time you first saw them, where were they?

Ans. There were two near the north end of the side track, one at or below the middle, southward.

34th Q. When was the one at or below the middle southward placed there?

Ans. I do not know.

35th Q. How long had it been there to your knowledge, up to the time of this accident?

Ans. I had no knowledge of its being there until after the accident.

36th Q. Am I to understand that the only means you have of
133 knowing it was there, is by discovering the dry spot on the ground that you have spoken of?

Ans. No, sir.

37th Q. What other means?

Ans. I saw No. 5 come down and pull it back.

38th Q. When No. 5 came down and pulled it back, where was it?

Ans. I could not see when they coupled on—could not say how far they pulled it back.

39th Q. Did you say that it was at the spot corresponding with the dry spot when No. 5 came down and coupled on to it?

Ans. No, sir; don't know where it was when they coupled on to it.

40th Q. Did you see No. 5 when it ran down to couple?

Ans. Yes, sir.

41st Q. Where were the other two cars that stood near to the north end of the side track?

Ans. The one first north was coupled on to the engine.

42nd Q. Did you see the middle car when it ran down to couple?

Ans. I saw it when they coupled on to the first car, the box-cox nearest the north end of the side track.

43rd Q. Do you know whether those two cars nearest the north end of the switch were coupled together?

Ans. I do not know of my own knowledge.

44th Q. Did you see No. 5 when she came in onto the switch?

Ans. Yes, sir; I threw the switch for them to go on.

45th Q. Whereabouts is that you threw that switch—that you threw for No. 5 to go in on?

Ans. North end of this side track, 12 or 15 feet south of the crossing of the C. C. C. and I.

46th Q. Whereabouts were these box-cars that you speak of, at the time No. 5 went in on the switch?

Ans. About $\frac{1}{3}$ way in on the switch from the north.

134 47th Q. When had they been placed there?

Ans. I don't know.

48th Q. Do you know from what train they came?

Ans. No, sir.

49th Q. Did you see them, or either of them, after No. 5 had pulled in on the switch and stopped?

Ans. I did—saw the baggage-master get out and go forward and couple the engine on to them.

50th Q. Did you see him couple the engine?

Ans. I did.

51st Q. Whereabouts were you standing at the time?

Ans. Right by the flag-house. I had left the switch I had opened.

52nd Q. What was the distance to the rear end of the train from where you stood, at right angles?

Ans. About three rods, as near as I can guess.

53rd Q. Where were these cars when you next saw them after that accident?

Ans. They were near the middle of the switch, No. 5 having pulled them back up.

54th Q. About how long was that after No. 5 went in on to the side track?

Ans. About ten minutes, more or less.

55th Q. How long was it from the time No. 5 came in until No. 6 arrived?

Ans. From five to ten minutes—only guess at that.

56th Q. Did you see them the second time, before or after No. 6 arrived?

Ans. After the arrival of No. 6.

57th Q. Will you swear that the two cars were together at the north end, at the time you saw the baggage man went forward to couple?

135 Ans. They were near together, might have been a few feet apart; I was standing, looking right at the end of them.

58th Q. At the time you saw No. 5 pulling those cars back, how many cars were together?

Ans. Three.

59th Q. Did you see the collision?

Ans. I did not; I had knowledge of it soon after No. 6 pulled up.

J. W. BYERS.

Met pursuant to adjournment, 8.30 a. m., Thursday, Feb. 29th, 1879.

BENJAMIN I. GREGG, being duly sworn, deposes and says:

Q. 1st. What is your name, age, residence, and occupation?

Ans. My name is Benjamin J. Gregg; age, 42 years; residence, Sandusky, Ohio; occupation, master mechanic of the C. S. and C. Railroad.

2nd Q. How long have you been connected with the C. S. and C. R. R., and in what capacities?

Ans. I have been working for them since 1851, with the exception of three years. For the past two years I have been master mechanic; before that time I first went in as fireman and fired two years, and then I went into the shop to learn the machinist trade; I was in the shop about three years, and then I went to run as engineer on the road—was engineer on the road up to the spring of 1863; then I left here and went on the Little Miami road between Columbus and Cincinnati. I came back to C. S. and C. in 1866, and was engineer up to 1870, and

136 then I went into the round house as foreman.

Q. 3rd. Were you on No. 6 on the occasion when Sylvanus Kelly had his arm hurt August 23rd, 1877?

A. Yes, sir.

4th Q. Whereabouts were you on the train at the time of the accident?

Ans. I was standing in the forward end of the parlor car, going north. I had been standing there perhaps five minutes.

5th Q. Please describe what you noticed when the train passed the south end of the side track south of the C. C. C. & I. crossing at Bellefontaine?

Ans. The first I noticed was kind of a jar to the train, but I didn't know what caused it until we got stopped. After the train stopped I got out, and I saw a freight car on the side track, and I came to the conclusion that the train had struck it.

6th Q. How did the jar to the car in which you were affect you as you stood in it?

Ans. Didn't affect me a particle.

7th Q. State the cars which composed the train No. 6 and their order in the train.

Ans. The first car was the baggage car, next to that was the parlor car, next was smoking car, next was coach, being the rear car.

8th Q. What kind of a freight car was it which stood at the south end of the side track and jarred the passing train?

Ans. It was a box car.

9th Q. Did you go to it and examine it?

Ans. I did not.

10th Q. Did you examine the cars composing the train No. 6 to see what evidences they showed of having been in contact with this
137 freight car; and if yea, please describe them, beginning with the forward car.

Ans. Yes, sir; I examined them. I noticed on the forward end of the baggage car that it had struck the freight car upon the corner. I believe that was all the damage there was to that car. The parlor car, there was one batten knocked off on the right-hand side going north. That is the only damage to the cars, with the exception of the rear coach, the forward corner the paint was scratched off perhaps to the depth of a sixteenth of an inch.

11th Q. Please state what marks of the contact were on the forward end of the baggage car, and how far they extended along the front end of the car.

Ans. It was perhaps two inches on the corner post. It was a bruise on the corner post.

12th Q. Was this corner post of the baggage car rounded or square?

Ans. It was rounded.

13th Q. How deep was the bruise upon the post?

Ans. It was perhaps half an inch or more; can't say positive just now.

14th Q. Please give the dimensions of the batten which was knocked off the parlor car.

Ans. The batten was about 2 or 2½ inches wide and about ⅝ of an inch thick; it is 6 or 8 feet long.

15th Q. Did this batten project, or was it even with the adjacent panel of the car?

Ans. It projects the thickness of the batten.

16th Q. What other marks or indications did the parlor car have of contact with this freight car?

Ans. None.

138 17th Q. What indications had the smoking car of any contact with the freight car?

Ans. None.

18th Q. What marks or indications had the rear coach of contact with the freight car, beside the scratching of the paint at the forward corner which you have already mentioned?

Ans. None.

19th Q. Were these cars composing train No. 6 kept running on the train after the accident?

Ans. Yes, sir.

20th Q. Please identify the rear coach which was upon train No. 6 at the time of this accident?

Ans. It was coach No. 9.

21st Q. What repairs, if any, have been made upon this coach No. 9 since this accident?

Ans. No repairing, except put under some new wheels. It has been washed and varnished since.

22nd Q. Besides being washed and vanished, have any repairs of any kind been made to the body of this car No. 9?

Ans. All we have done, we have put on some hoods on the ends of the cars, which is a sheet-iron protection extending from the roof over the platform of the car.

23rd Q. State whether or not all marks and indications which this car No. 9 had of contact with the freight car are still plainly to be seen on this car No. 9?

(Objected to.)

Ans. Yes, sir.

24th Q. Since July, 1877, who upon the C. S. and C. R. R. has had the passenger cars in charge and under whose direction has repairs been made to them?

139 Ans. My own.

Cross-examination:

25th Q. Where did you get on train No. 6 that day?

Ans. At Springfield.

26th Q. In what car did you take passage?

Ans. I think I got into the smoking car here first. I rode in the smoking car to between Ubana and West Liberty, when I went into the parlor car.

27th Q. Whereabouts in the parlor car were you at the time of the accident?

Ans. I was standing at the forward end of the parlor car at the door.

28th Q. What was you doing?

Ans. I was looking out the window.

29th Q. Did you see the freight car before it came into collision with train?

Ans. I did not.

30th Q. What was your first knowledge of the impending collision?

Ans. I felt a jar.

31st Q. When you felt the *the* jar did you look to see what caused it?

Ans. Not until the train had stopped.

32nd Q. When did you first see the freight car that caused the collision?

Ans. Not until after the train had stopped and I got outside.

33rd Q. When did the train stop?

Ans. Perhaps it was a car's length north of the freight car; that is, the rear end of the train was a c r's length north of the freight car.

140 34th Q. Whereabouts was the freight car at that time when you first saw it?

Ans. It was standing at the south end of the side track.

35th Q. How long did the passenger train remain stopped at this point before it pulled up to the depot?

Ans. A short time.

36th Q. Whereabouts was the passenger train No. 6 at the time you examined it to ascertain the injuries it had received?

Ans. Up at the platform, at the depot at Bellefontaine.

37th Q. Did you personally examine each car at that time?

Ans. I did.

38th Q. Did you examine the train at that time and particularly note the relative position of each car in it, or do you speak from a general recollection only?

Ans. I examined all the cars that day.

39th Q. With reference to their location in the train, or only as to injuries?

Ans. I went to the forward end of the train first and examined the baggage car; then I noticed the parlor car; I was examining to see what the injuries were.

40th Q. Was the body of this freight car hung on springs?

Ans. I presume it was; most all cars have springs.

41st Q. Were the coaches of this train No. 6 hung on springs?

Ans. They were set on springs.

42nd Q. Is it not true in running a train of cars, the coaches of which are set on springs, that they will vibrate from side to side to some considerable extent?

Ans. They do have some swinging motion to them.

43rd Q. Is it not true that this motion will be great or less according to the rate of speed run, and the inequality of surface of rail?

141 Ans. Yes.

44th Q. What causes the greater?

Ans. It would be in the greater the speed, or greater the inequality of surface.

45th Q. Is it not true that where a box car on springs, standing on switch, comes in contact with a moving train of cars, the coaches of which are also on springs, that the blow received will cause the two to spring apart, the recoil bringing them together again, and so continue while the train is passing, producing a series of bumps or concussions?

Ans. Yes, sir; I expect it would.

46th Q. Did you note the numbers of the cars in that train at that time?

Ans. Not particularly; no.

47th Q. Did you note the number of any car in the train at that time?

Ans. I recollect the number of the hind coach very well. I did not note the number of any car in the train that day.

48th Q. When was it that you noted so as to remember the number of the rear coach in that train that day?

Ans. I noticed at Springfield, on the morning I got on the train No. 6 that day, I put the coach on Grant's train which was No. 6 on that

day the preceding spring, and it had not been taken from the train up to the time of the accident to my knowledge.

49th Q. What was there to particularly call your attention to the number of the rear car of that train on that day at Springfield?

Ans. I just noticed that car particularly because we were
142 talking of taking it in to wash and varnish it.

50th Q. Can you give me the number of any other car composing that train on that day?

Ans. No; I don't know as I can.

Re-examination:

51st Q. Were any of the window panes of the rear coach of this train broken at the time you examined the train at Bellefontaine after this accident?

Ans. Not that I know of.

52nd Q. Were any of the window panes of any of the other cars composing this train No. 6 broken at the time you examined them at Bellefontaine after the accident?

Ans. I didn't notice any.

53rd Q. State whether or not you would have noticed them if any of them had been broken by this contact with the standing freight car?

(Objected to as calling for a conclusion.)

Ans. I think I should.

54th Q. Assume that this box freight car standing on the south end of the side track was empty, would its collision with the forward end of the baggage car tend to move the empty box car; and if so, in what direction?

Ans. It would have a tendency to move it in the same direction as the train was going. We were going north.

55th Q. Is the swinging motion of a coach in a train running on a straight track as much as it is when passing around a curve?

Ans. No, sir.

56th Q. What is the distance between the end of a stringing beam or bolster and the side beam of the truck frame of car No. 9?

143 Ans. I can't say positive to that car; it is generally about an inch and a quarter on each side.

57th Q. The springs lie under this bolster, do they not?

Ans. Yes, sir.

58th Q. Please explain where they are; that is, the el'iptic springs you have before spoken of?

Ans. The e'liptic springs are under the spring beam, and rest on what we call a sand board.

59th Q. The space then between the bolster and side beam being an inch and a quarter as you say, that is the greatest swinging motion the body of the coach would have?

Ans. It couldn't have any more than that.

60th Q. Were not the windows of the parlor coach composed of a single and very large pane of glass?

(Objected to.)

Ans. They are.

61st Q. Give the dimensions of the panes of glass of the parlor coach?

Ans. I can't tell the size of them.

62nd Q. About how many feet wide are they?

Ans. Perhaps they are 3 feet; I can't say particularly.

ReX examination:

63rd Q. You speak of the swinging motion of the car not being more than an inch and a quarter; now do you mean swinging, or a deflection from a horizontal line?

Ans. Of course it will go both ways more than an inch and a quarter. It will swing one side an inch and a quarter, and of course the top will swing further over than the bottom when running and a rolling.

144 64th Q. Is not the center of the width of the body of the car hung on a pivot on the center of the running gear?

Ans. It rests on what is called the center plate.

65th Q. What is there that prevents the car tipping from one to the other side?

Ans. They have side bearings.

66th Q. What are these side bearings?

Ans. They are made of cast iron.

67th Q. What are they supported by at the ends?

Ans. They are fastened on to the swing-beam at each side.

68th Q. What supports the ends of the swing-beams?

Ans. They are supported by hangers.

69th Q. What supports the hangers?

Ans. The cross-beam of the truck frame.

70th Q. What supports the end of this cross-beam?

Ans. These cross-beams are mortesed in to the side pieces of the truck.

71st Q. What supports the side pieces of the truck?

Ans. That is a part of the frame; the springs that hold the truck up is an equalizing bar, run from one wheel to the other, there being two wheels, one each side of the truck frame. There is a spiral spring set on this equalizer, and comes up under this outside truck frame; there are two of them on each side at each end.

72nd Q. What is the office or purpose of these spiral springs on the equalizer?

Ans. They are put on there for the purpose of making the car ride easy.

73rd Q. In what direction do they communicate motion to the coach?

Ans. Up and down motion.

145 74th Q. How much can they be depressed?

Ans. Perhaps 2 inches, without breaking.

75th Q. When force is applied to the side of a car, will not these springs on the opposite side be depressed?

Ans. Yes; I think they will.

76th Q. When the force is removed, will they not react and depress the springs on the opposite side?

Ans. Yes, sir.

77th Q. Is it not this that produces the oscillating motion to the car?

Ans. Yes; that is what gives the rocking motion to a car.

78th Q. What is the height of the coach ordinarily from the equalizing springs?

Ans. About 12 feet.

79th Q. At that point, 12 feet, with the depression of two inches on the spiral springs, how far will the car pass from a perpendicular line?

Ans. I don't know that I can tell you just now.

Adjourned to meet at 1.30 p. m.

Met pursuant to adjournment.

80th Q. Please answer question No. 79 as near as you can.

A. Perhaps it will go six inches.

81st Q. The swing-bar you speak of is the one resting upon the el'iptic spring, is it not?

Ans. It is.

82nd Q. Are not the el'iptic springs set traverse with the body of the coach?

Ans. Yes.

83rd Q. Do they not permit a lateral motion of the body of the
146 coach, the extent of which is regulated by the distance that the end of the swinging-bar is from the inside of the truck frame?

Ans. Yes, it does.

84th Q. That distance, you say, is usually 1¼ to 1½ inches between either end of the swing-bar and the inside surface of the truck frame, making from 2½ to 3 inches all told.

Ans. Yes, sir.

85th Q. Is not this lateral motion, that you speak of, independent of and different from the rolling or oscillating motion spoken of before, and do they not both contribute to the side motion of a car?

Ans. They are different, and they do both contribute to the side motion of the car.

86th Q. Is it not true that the tendency is, in case of collision or contact, that the object collided with, to drive the object in a direction opposite from which the blow came?

Ans. It would have a tendency to drive the car ahead and a little to one side, it being a glancing blow.

87th Q. Is it not the tendency to drive an object in an opposite direction from which the force is applied to it, in the case of a collision?

Ans. Yes.

88th Q. Where the corner of a car is rounded and it comes in contact with a car on the side track, is it not the tendency to throw the cars apart, as well as along the track?

Ans. Yes; I think it does, to some extent.

B. J. GREGG.

147 ROBERT B. NAYLOR, being duly sworn, deposes and says:

1st Q. What is your name, age, residence, and occupation?

Ans. My name is Robert B. Naylor; age, 46 past; residence, Sandusky City; occupation, engineer on the C., S. & C. R. R.

2nd Q. How long have you been locomotive engineer on the C., S. and C. Railroad?

Ans. I was made an engineer in 1855, in July or August.

3rd Q. Have you been constantly acting as a locomotive engineer on that road since that time?

Ans. Yes; with the exception of two or three weeks.

4th Q. How long have you been as an engineer running a passenger train on that road?

Ans. Regularly, between 12 and 13 years.

5th Q. How long have you been employed upon that road?

Ans. I think since the fore part of the year 1863.

6th Q. Were you the engineer of the passenger train No. 6 on the 23rd of August, 1877?

Ans. Yes.

7th Q. What time did that train arrive at Bellefontaine on the 23rd of August, 1877, from the south?

Ans. Between twelve and one o'clock.

8th Q. What were you doing at the time your train approached the side track just south of the Bellefontaine station, on the 23rd August, 1877?

Ans. Applying the brakes to stop the train.

9th Q. What kind of brakes?

Ans. What are termed the Gardner and Ransom air brakes.

10th Q. About how far south of the south end of this side track was your train when you began to apply the air brake?

148 Ans. Well, I should think from 400 to 500 feet south of switch of the side track there.

11th Q. What led you to apply the air-brake?

Ans. I saw a car standing there on the side track which I thought was standing too near the main track.

12th Q. How soon after you discovered that the car on the side track might be too near the main track did you apply the air-brake?

Ans. Directly.

13th Q. Was the steam on or off the engine at the time you applied the air-brake?

Ans. The steam was shut off, the throttle valve being closed.

14th Q. How far south of the switch on this side track had you shut off steam?

Ans. In the neighborhood of a quarter of a mile.

15th Q. What were you doing between the time you shut off steam and the time you applied the air-brake?

Ans. Sounding the whistle for the station and tried the water; we always try the water after shutting off steam.

16th Q. Did you shut off steam at the usual place for the Bellefontaine station?

(Objected to.)

Ans. Yes.

17th Q. Where were you standing when you sounded the whistle?

(Objected to.)

Ans. On a small box or platform which is attached to the deck of the engine. It is made for the engineer to stand on.

18th Q. When you sounded the whistle was your face or your back toward the pilot of the engine?

Ans. My face.

149 19th Q. What were you looking at while you sounded the whistle?

(Objected to.)

Ans. I was looking forward to see if the track was clear.

20th Q. Which side of the engine were you on?

Ans. The right side.

21st Q. Which is the engineer's side?

(Objected to.)

Ans. The right-hand side.

22nd Q. Did you discover that there was a car standing on this side track before you applied the air-brake?

(Objected to.)

Ans. I did.

23rd Q. How long before?

Ans. Soon after I shut off steam.

24th Q. When you first saw it how did it appear to be standing as respects the main track, as to whether it might be too close or not?

(Objected to.)

Ans. At that distance I supposed it would clear the main track.

25th Q. How soon did you discover that it might be too near the main track?

Ans. At the time I applied the brake.

26th Q. What were you looking at from the time you first discovered the standing car to the time you applied the brakes?

(Objected to.)

Ans. I had to look at whistle lever, the gauge cock, when I was trying the water, and the balance of the time watching the track looking forward.

27th Q. At what rate of speed was your train moving at the time
150 you shut off steam?

Ans. Probably 35 miles an hour; perhaps a little faster or a little slower.

28th Q. What was the usual and customary rate of speed of your train at that place at that season?

(Objected to.)

Ans. Thirty five miles; a little more or a little less.

29th Q. What was the usual customary rate of speed of your train from the time of getting under headway from West Liberty until you shut off steam for Bellefontaine?

(Objected to.)

Ans. At times we couldn't run over 20 miles an hour on account of grades; we ran from 20 up to 35.

30th Q. What is the distance between West Liberty and Bellefontaine?

Ans. Between 8 and 9 miles, I think.

31st Q. Did you notice a car standing on the side track when the locomotive passed it?

Ans. Yes.

32nd Q. What were you doing when your train struck it?

Ans. I looked back to see if the freight car was going to strike the baggage car.

33rd. Q. Did it strike it?

Ans. It did.

34th. Q. Where did the standing car strike the baggage car, and how?

Ans. The corner of the freight car struck the corner post of baggage car about a foot from the roof.

34th Q. Which corner post of the baggage car—the one at the rear or the front end of the car?

Ans. The forward or front end—the right side of the car.

35th Q. Did you notice about how far into the post of the baggage car the corner of the freight car struck?

151 Ans. I should judge about two inches.

36th Q. Did you examine the bruise afterwards?

Ans. I did.

37th Q. What effect did its contact with the forward post of the baggage car have upon the freight car standing on the side track?

Ans. I thought it swung the body of the freight car over.

38th Q. Did you see it strike any other part of your train?

Ans. No.

39th Q. At what place did your train stop?

Ans. The train had passed the freight car something like from 50 to 100 feet.

40th Q. Was this at or south of the usual place for stopping your train for the C. C. C. and I. crossing?

Ans. South of the usual place.

41st Q. About how far south?

Ans. Probably from 4 to 500 feet.

42nd Q. Did you examine the cars of the train after this accident to see if they had come in contact with this standing car?

Ans. I did.

43rd Q. When and where?

Ans. At the station at Bellefontaine on arriving there that day.

44th Q. Were there any indications on the baggage car of its having come in contact with the standing car other than the forward post already spoken of?

Ans. Nothing that I remember of more than the scratches on the side of the car.

45th Q. Do you remember what car was next the baggage car in your train?

Ans. I think it was a parlor car.

152 46th Q. What marks or indications if any were upon the parlor car of its having been in contact with the standing car?

Ans. I don't remember of any marks being on the parlor car.

47th Q. Was any part of the parlor car knocked off?

Ans. Not that I remember of.

48th Q. How about the smoking car?

Ans. I didn't notice any marks on the smoking car.

49th Q. How about the rear coach?

Ans. The coach looked as though it had been struck on the corner post, and scratched along the side above the windows.

50th Q. What indication was there on the corner post of the rear coach?

Ans. There was a bruise there that looked like it had been struck by wood or something.

51st Q. How long has this side track been in existence?

Ans. I couldn't say; it has been there a number of years; I couldn't say how many.

52nd Q. How long have you been running trains as an engineer past it?

Ans. That is a question I couldn't answer, because I don't know when the side track was put there.

53rd Q. Has it been a usual or an unusual thing for freight cars to be standing on this track when your train passed?

(Objected to.)

Ans. It has been usual for cars to stand there, on account of its being part of a transfer track.

54th Q. During the time you have run trains as an engineer on this road, how frequently, if ever before, was there a car standing on this side track too close to the main track when you passed with your train?

153 (Objected to.)

Ans. That was the first time.

Cross-examination.

55th Q. Is not this (presenting witness with paper entitled, Time-table one, herewith attached as exhibit) the time table in force on the 23rd of August, 1877, and by authority of which you ran your train on that time?

Ans. There is nothing on the time table by which I can identify it as the Time-table in force at that time.

Mr. Bowman, the attorney of the receiver of the railroad company in

this action, admits that this time table which is now marked Time-table one, and put in evidence, is the Time-table which was in force on the 23rd of August, 1877.

56th Q. Now, referring to this time table, what was the time for No. 6 for leaving Springfield on that day?

Ans. Eleven o'clock and fifteen minutes a. m.

57th Q. Did you leave on time?

Ans. I couldn't say.

58th Q. What is the distance from Springfield to Bellefontaine, by the C. S. and C. R. R.?

Ans. $32\frac{3}{10}$ miles, according to this time table.

59th Q. What was the time for your arrival at Bellefontaine?

Ans. 12.27.

60th Q. What was your first stopping station north out of Springfield?

Ans. Urbana.

61st Q. The distance from Springfield?

Ans. According to this time table it would be $15\frac{2}{10}$ miles.

154 62nd Q. What was the time for your leaving Urbana?

Ans. The arriving time by this card 11.48, and the leaving time is as soon as we can do the work of the train.

63rd Q. Did you arrive at and leave Urbana on time?

Ans. I could'nt say.

64th Q. What is your next stopping station north of Urbana?

Ans. West Liberty.

65th Q. Did you arrive at and leave West Liberty on time?

Ans. Couldn't say.

66th Q. What other stopping station was there for that train south of Bellefontaine?

Ans. None.

67th Q. Was Urbana and West Liberty the only stopping places for that train between Springfield and Bellefontaine?

Ans. They were.

68th Q. Did your train on that day stop at any other point besides Urbana and West Liberty?

Ans. I don't remember.

69th Q. Did you have any trouble on the route between Springfield and Bellefontaine, causing delay?

Ans. I couldn't say whether there was any trouble or not.

70th Q. Did you arrive at Bellefontaine on time?

Ans. I noted in my pocket diary that we were approaching Bellefontaine on time, and therefore I recollect that we were on time as we approached Bellefontaine.

71st Q. How far south of the south end of the south side track at Bellefontaine is the first curve of main track?

Ans. There is a little curve as we approach the side track about four or five rods from the switch, and then the track is straight for about a quarter of a mile.

155 72nd Q. Where was your train on the 23rd of August, 1877, with reference to the north end of the curve you speak of, at the time you shut off steam for Bellefontaine? I mean the curve you say to be about a quarter of a mile from the south end of the switch?

Ans. My train was about leaving that curve passing on to the straight track.

73rd Q. Can this south end of side track be seen from that point?

Ans. I could see the car standing there on the south end of the side

track. That is, cars standing on the side track can be seen from that point.

74th Q. Can you say, that on that particular occasion at that point you actually looked and saw a car or cars standing at that side track?

Ans. I couldn't say just at that point for this reason: at that point I shut off steam and tried the water and was engaged in those duties for a few seconds.

75th Q. How far had your train passed from the point where you shut off steam when you ceased trying your water?

Ans. I couldn't tell; it was but a few seconds, probably 150 feet or 200, somewheres along there.

76th Q. What is the grade of that track north from the point where you shut off steam, up or down?

Ans. It is my opinion that from there to the station it is up grade.

77th Q. Was this the usual place for you to shut off steam?

Ans. It was at that season of the year, warm weather.

78th Q. Was your steam entirely shut off, or was your engine still taking some steam?

Ans. Entirely shut off. The throttle valve was closed.

79th Q. How far had you passed from the point where you shut
156 off steam to where you applied the air-brake?

Ans. I should say it was 400 or 500 feet from the switch.

80th Q. How far had you passed from the point where you shut off steam to where you applied the air-brakes?

Ans. Probably from 8 to 900 feet.

81st Q. Were there any brakemen upon that train?

Ans. Yes, sir.

82nd Q. How many?

Ans. Two, acting as brakemen.

83rd Q. Were there any brakes attached to that train other than the air-brake?

Ans. None.

84th Q. Is there any other mode of applying the brakes other than by the engineer from the locomotive; and, if so, what?

Ans. They are attached to a brake-wheel, rod and chain, worked by hand, whereby the brakeman can stop the train should the air fail.

85th Q. How many cars composed that train, and what were they?

Ans. Four cars; baggage, parlor coach, smoking-car, and coach.

86th Q. Was the train lightly or heavily loaded?

Ans. I have no means of knowing.

87th Q. Were there many or few passengers on the train?

Ans. I couldn't say.

88th Q. When you applied the brake, did you use the full power of it?

Ans. I did.

89th Q. Did the wheels become stationary, or continue to revolve?

Ans. I couldn't say.

90th Q. Did the brakes take effect as usual when the full power is applied to them?

157 Ans. They did not; the track was wet, and I couldn't stop the train as quick as if it had been dry.

91st Q. I mean the action of the brake upon the car, and not the track.

Ans. Yes; the brakes were in thorough repair, and good working order.

92nd Q. Did you keep the brakes applied constantly from the time you first applied them until the train stopped?

Ans. I did.

93rd Q. To what extent was the track wet and slippery?

Ans. Well, it had been raining very little, and made it worse than a heavy rain, for a heavy rain would wash the rails clean.

94th Q. Was you aware of this fact at this time?

Ans. I was.

95th Q. Had you any appliances with the locomotive for sanding the track to avoid the slipperyness of it?

Ans. Oh, yes.

96th Q. Did you use it for that purpose on that occasion?

Ans. I did not; under the excitement, I didn't think of it. Persons in time of danger are liable to become somewhat excited.

97th Q. Did you make any effort or attempt to leave the locomotive?

Ans. Not while the train was in motion.

98th Q. Did you make any preparation to leave the locomotive while it was in motion?

Ans. I did not.

99th Q. Who was your fireman at the time?

Ans. Webb Lott.

158 100th Q. Where is he?

Ans. He was in the other room this morning.

ROB'T B. HAYLOR.

WILLIAM CASH, being duly sworn, deposes and says:

1st Q. Please state your name, age, residence, and occupation.

Ans. William Cash; age, 68 years; residence, Sandusky; occupation, baggage master on the C., S. and C. R. R.

2nd Q. How long have you been in the employ of the C., S. & C. R. R.?

Ans. I think it is 28 years.

3rd Q. Were you on the passenger train No. 6 on the occasion when Sylvanus Kelly, a passenger, was said to be hurt just south of Bellefontaine on the 23rd day of August, 1877?

Ans. I was on the train, but I couldn't testify as to the date. I was acting as baggage master on No. 6 that summer.

4th Q. Did you notice that the train came in contact with a standing car on the south end of the side track just south of Bellefontaine?

Ans. I felt the concussion of the car and looked out and saw the freight car, and the dust flying from its roof, just as the parlor car passed it.

5th Q. What were you doing when you felt the concussion?

Ans. I was getting my baggage ready at the door to put out at the station.

6th Q. What effect did the concussion have upon you?

Ans. I felt a slight jar; it didn't knock me from my feet or anything of the kind. I have very frequently felt as considerable a jar passing over a rough joint or a frog.

7th Q. Did you see the standing car on the side track?

Ans. I saw it.

159 8th Q. What kind of a car was it?

Ans. It was a box car.

9th Q. How many cars were there at the south end of the track at the time?

Ans. There was but one. There were two or three cars standing on the side track 40 or 50 yards north of it.

10th Q. What did you do after you saw the standing car?

Ans. I put the balance of my baggage at the door ready to put out at the station.

11th Q. What effect, if any, did the concussion have upon the baggage in your car?

Ans. None, sir, that I discovered at all.

Cross-examination:

12th Q. Were you in the baggage car at the time of the collision, and did you remain in the baggage car until the train arrived at the station?

Ans. I remained in it all the time, I think, until I got to Carey.

WM. CASH.

Adjourned at 5 o'clock p. m. to meet at 7 p. m.

Met pursuant to adjournment.

GEORGE E. GREGG, being duly sworn, deposes and says:

My name is George E. Gregg; age, 41 years; occupation, conductor on C., S. and C. R. R.; residence, Sandusky. I was in Bellefontaine, in the summer of 1877, at the depot of the C., S. & C. R. R. when train No. 6 arrived, being the train and occasion on which Sylvanus
160 Kelly was injured; I was advertising an excursion, was the occasion of my being at Bellefontaine. After the arrival of No. 6, on learning that Sylvanus Kelly was hurt, I went with David Boyd down to the south end of the side track just south of the Bellefontaine station.

1st Q. Did it rain at Bellefontaine the day on which Sylvanus Kelly was hurt?

Ans. Yes, sir.

2nd Q. When did it begin and when did it quit raining?

Ans. I don't recollect when it began, but I think it quit about half-past eleven.

3rd Q. Did you notice any indications upon the side track toward the south end of it of the place where a car had stood while it rained?

Ans. Yes, sir.

4th Q. What was it?

Ans. A dry spot about the length of one car.

5th Q. About how far was that dry spot from the frog at the south end of the side track?

Ans. It was a 100 feet at least; I think more.

6th Q. Can you identify the place with reference to any object that adjoins the side track?

Ans. Yes, sir. It was an alley that runs east from the side track. The dry spot was just south of the alley in front of a small building, a dwelling house.

7th Q. What was the condition of this side track from this dry spot southward to the main track as respects being wet or dry?

Ans. Wet; it was wet.

Cross-examination:

8th Q. Was the rail of the side track wet or dry at the time
161 you went down?

Ans. Could not tell.

9th Q. Did you see any car on the side track at the time?

Ans. Yes, sir.

10th Q. How many, and what kind?

Ans. There was a box-car at the south end, and I think there was (3) three more with it.

11th Q. How long was this after No. 6 arrived before you went down there?

Ans. It is my impression it was not over 30 minutes.

12th Q. How long had you been at Bellefontaine at that time on that day, in and about the station?

Ans. I went there on train 11 from Kenton, and arrived at Bellefontaine about 9 a. m. I did not stay at the depot; I went up town. I came down to the depot to get my dinner about 30 minutes before the arrival of the trains.

13th Q. Did you see No. 6 when it arrived at the depot?

Ans. Yes, sir.

14th Q. Were there many or few passengers aboard?

Ans. I could not tell; I did not notice.

GEO. E. GREGG.

ALONZO D. CURTIS, being duly sworn, deposes and says:

My name is Alonzo D. Curtis; age, 31 years; residence, Adrian, Ohio; and am brakeman on C., S. and C. R. R.; I have been in the employ of that road for 11 or 12 years, and have been brakeman during the whole time; I was on passenger train No. 6 going from
162 Springfield north, in the summer of 1877, on the occasion when Sylvanus Kelly was hurt on the train near Bellefontaine, and was acting as one of the brakemen of the train.

1st Q. Were there hand-brakes on the cars at that time?

Ans. We had brakes on, but the air-brakes were used to stop the train.

2nd Q. Under what circumstances were hand-brakes used?

Ans. We only used the hand-brakes when the air-brakes failed, and the hand-brakes were of no use when the air-brakes were working. My other duties were coupling the hose and seeing that the air-brakes worked all right, and looking after the cars.

3rd Q. Whereabouts on the train were you when it approached the south end of the *south end of the* side track south of the C., C., C. and I. crossing at Bellefontaine?

Ans. I was on the north platform of the No. 9 coach, to use the hand-brake in case the air-brake should happen to give out.

4th Q. Did you notice whether or not the air brake was operating as the train approached the south end of the side-track?

Ans. Yes, sir. It was operating all right.

5th Q. Did the train come in contact with any object standing on the south end of this side-track, and if so, what was it?

Ans. Yes, sir; there was a box-car there.

7th Q. Upon the platform of which car were you standing?

Ans. No. 9 coach, upon the front end of the rear passenger coach of the train.

8th Q. How did the contact of the train with the standing freight car effect you?

(Objected to.)

163 Ans. Didn't affect me at all, no more than the regular motion of the train.

9th Q. Did you see any of the cars of the train strike the standing freight car?

Ans. No, sir; I didn't. Heard noise and looked around after it happened, did not see it until after it struck the car I was on.

10th Q. Did you know the car had struck the train in any other way than by hearing the noise?

Ans. No, sir.

11th Q. What was the noise you heard?

Ans. The noise I heard was when it struck the coach I was on, such as when you take a board and strike it against something.

12th Q. How many cars were there standing at the south end of the side track at that time?

Ans. One freight box-car.

13th Q. Where was the train when it stopped?

Ans. It was north of the freight car about car length and half to two car lengths.

14th Q. Did you examine the marks on the rear coach which the striking of the car had made on it?

Ans. Yes, sir. I noticed the car after it happened. The car wasn't damaged much; noticed it some, not a great deal.

15th Q. What marks were there on the rear coach indicating it had come in contact with the standing freight car?

Ans. It looked like it had struck something. I can't describe what kind o' a mark it was. There was scratching or something of that kind; I can't describe it.

164 16th Q. Were any panes of glass of the windows of the rear coach broken by this accident?

Ans. No, sir; there was not any; the only damage was at the corner of the coach.

Cross-examination:

17th Q. On what point on the road did you take your position on the platform of the rear coach, as the train was approaching Bellefontaine?

Ans. When we whistled for the station I took my place on the platform.

18th Q. Do you know a curve in the main track, in the neighborhood of a half mile south of Bellefontaine Station?

Ans. Yes, sir.

19th Q. Where was the train with reference to that curve at the time you took your position on the platform?

Ans. Just after they got around north of the curve.

20th Q. On which side of the platform did you take your position, right or left?

Ans. I was to the left.

21st Q. In which direction was your face turned?

Ans. Turned to the north.

22nd Q. Was you looking out ahead on the left side of the train?

Ans. Yes, sir.

23rd Q. Did you remain in that position until after the box car struck the coach you was on?

Ans. No, sir.

24th Q. At what time did you change your position?

Ans. When I heard the noise I stepped to the other side the platform.

25th Q. To what noise do you refer?

Ans. As though somebody had a stick in their hand and had
165 thrown it against something.

26th Q. Do you refer to the noise made by your car striking the freight car?

Ans. Yes, sir.

27th Q. It was not, then, until after your car had struck the freight car, that you turned and went to the right side of the platform, was it?

Ans. No, sir.

28th Q. Did you see the freight car at any time before it struck your car?

Ans. No, sir; I didn't see it until afterwards.

29th Q. Had not your train passed the freight car before you saw it?

Ans. It passed the car before I saw it.

30th Q. When did you examine for injuries to your train?

Ans. After we got up to the station.

31st Q. Was there not a fresh bruise on the right hand corner of your car about 3 inches above the lower line of the windows?

Ans. Yes, sir; there was a mark there.

32nd Q. Was there not some scratches along the side of the car just above the windows, running considerable of the length of the car?

Ans. No, sir; there was no mark except on the corner of the car.

33rd Q. Will you swear that there was no mark a short distance under the eaves of the roof of the car, and above the windows near the middle of the car, as if made by the car rubbing against some hard object?

Ans. Yes, sir; I will.

34th Q. Will you swear that there was no mark on the right
166 hand side of that car other than the bruise you speak of as being on the right hand corner?

Ans. Yes, sir; there was no other than the bruise on the corner.

35th Q. Where was you standing at the time you first saw the freight car after it struck your car?

Ans. I was standing on the right-hand side of the platform of the car.

36th Q. Did you see the freight car at any other time than this time you speak of, that day?

Ans. No, sir; not until after we had stopped; seen it from where we was standing.

37th Q. How many other cars were there with it, or near it?

Ans. There wasn't any other cars.

38th Q. Do you know that fact from what you saw that day, or by hearing others talk about it since?

Ans. I know it from the fact that there was only one car there that day.

39th Q. Do you know it from what you saw there that day, or by the fact of hearing others talk about it since?

Ans. I know by what I saw there that day.

40th Q. Have you heard others say since that there was but one car at the south end of that side track?

Ans. Yes. I have heard others say there was.

41st Q. Now, sir, hasn't that fact assisted your recollection that there was but one car at the south end of the side track when your train passed?

Ans. No, sir; it has not.

42nd Q. How lately have you heard others say there was but one car there?

Ans. I haven't heard anybody say in conversation with anybody lately.

43rd Q. About how long ago did you hear anybody say there
167 was but one car there; whether in conversation with you or others?

Ans. It has been somtime ago, probably a month or so after the accident.

ALONZO D. CURTIS.

DANIEL W. LOTT, being duly sworn, deposes and says his name is Daniel W. Lott; age, 29 years; residence, Green Springs, Ohio; occupation, fireman on the C., S. and C. Railroad; and I have been in their employ as fireman for about three years. I was fireman on passenger train No. 6, in the summer of 1877, at the time Sylvanus Kelly was injured just south of Bellefontaine.

1st Q. Where were you, and what were you doing at the time the train approached Bellefontaine on that occasion?

Ans. I was sitting on the seat ringing the bell.

2nd Q. On which side of the engine?

Ans. The left hand side; the fireman's side.

3rd Q. What are your duties as fireman?

Ans. Shoveling coal, ringing the bell, and looking after the fires.

4th Q. What did you first notice as the train approached the south end of the side track, south of the C., C., C. & I. crossing in Bellefontaine?

Ans. I noticed the engineer trying to make a stop a little sooner than usual.

5th Q. Was the train stopped sooner than usual?

Ans. I think it was; I don't think we run up as near the crossing as we generally done.

168 6th Q. By what means was the train stopped on that occasion sooner than usual?

Ans. That I couldn't say.

7th Q. Did you see the train strike any object on the side track on that occasion?

Ans. I did not.

Cross-examination:

8th Q. Did you see the car on the side track before you struck it?

Ans. I did not. I didn't know it was struck.

9th Q. Did you not see a car on the side track just after you rounded the curve south of Bellefontaine?

Ans. No, sir.

10th Q. Did you see any car on the side track at any time that day?

Ans. Yes, sir.

11th Q. How long after the train made its first stop near Bellefontaine station and south of it?

Ans. I looked out on that side and saw the car standing there, as soon as we stopped.

12th Q. Did you see the freight car at any time before your train stopped?

Ans. I am very positive I didn't see the car.

13th Q. Did you see any car or cars on the side track at any time before your train stopped?

Ans. I don't remember whether I did or not.

14th Q. Had you any knowledge of an impending collison at any time before your train stopped?

Ans. I have not.

15th Q. Had you any knowledge, from any source whatever, that there was a freight car on the switch close to the main track before your train reached the switch?

Ans. No, sir.

16th Q. Do you know Sylvanus Kelly?

Ans. I never saw him but once to know who he was.

17th Q. Where was that, that you saw him once?

A. Green Springs.

18th Q. When, with reference to the time he lost his arm, before or after?

Ans. After.

19th Q. Upon this occasion, did you not tell him that you saw the car on the side track shortly after you rounded the curve, and you got afraid and would have jumped off the locomotive but that it was running too fast, or these words in substance?

Ans. I didn't tell him no such a thing.

20th Q. Did you talk with him about how the accident occurred at this time?

Ans. Talked with him about the accident; I don't know as I talked about how it occurred.

21st Q. About what distance south of the C. C. C. and I. crossing did that train usually stop for the crossing?

Ans. 200 or 300 feet above, south of the crossing. It might have been further sometimes.

DANIEL W. LOTT.

RALPH ROLLS GRANT, being duly sworn, deposes and says:

My name is Ralph Rolls Grant; age, 36 years; residence, Sandusky; occupation, conductor on the C. S., and C. Railroad. I have been conductor on this road about four years and five months last past; previous to that I was conductor of freight train and yard master part the time on the Fetchburg R. R. for about 4 years, and I had also been on the Ogdensburg and Lake Champlain R. R. about the same length of time; I was the conductor of passenger train No. 6, which left Springfield on the morning of the 23rd August, 1877, on which Sylvanus Kelly was hurt just south of Bellefontaine.

1st Q. Whereabouts on the train were you when the accident happened?

Ans. In the smoking car.

2nd Q. What indications did you notice, if any, in the smoking car, that the car had come in contact with something on the side track?

Ans. I had no indications that the car had come in contact with anything, except a noise as if some car near me had been struck with a flat piece of board.

3rd Q. How soon after this did the train stop?

Ans. Almost immediately.

4th Q. Where did you go when the train stopped?

Ans. Just as the train stopped my brakeman came in and told me that there was a man hurt in the coach; I started back, and met him in the aisle as they were helping him out; we got him out on to the platform, and I told them to get up to the station as quick as they could. In the mean time I was binding up the man's arm to prevent the flow of blood.

5th Q. Please state what cars composed your train on that occasion, and the order in which they were located in the train.

Ans. Baggage car No. 4, parlor car Queen City, smoking car No. 6, coach No. 9; they were I have named them.

6th Q. Did you examine these cars to see what indications they had

of having come in contact with any object on the side track; if yea, when and where, and what indications did you discover?

Ans. I did, after we arrived at the station at Bellefontaine, and after I had Mr. Kelly taken care of as well as possible. The baggage car was struck on the corner post, about a foot from the top; there was a little piece knocked out of the post; couldn't say how large. They put in a patch about four inches square, and also further down on the post was scraped. I can't say whether there was a batten knocked off the baggage car or not. On the parlor car there was one batten knocked off, the first batten from the corner, almost on the corner, also slight mark on the right hand corner post, nothing else, except the coach which was the rear car of the train which had a small mark on the corner post about ⅜ of an inch wide and two inches long.

7th Q. Was there any glass panes of any of the windows of any of the cars broken by the accident?

Ans. No, sir.

8th Q. Please give the dimensions of the windows of the parlor cars.

Ans. They were of a single pane of glass. The largest, to the best of my knowledge, are about 40 inches in length, by about 36 inches in h'ight*h*; they are double-strength glass, I presume.

Cross-examination:

172 9th Q. How are these glass fastened in the window?

Ans. I think with strips tacked on, on one side the sash.

10th Q. Do you know whether they are set with rubber packing to prevent them jarring, or by putty?

Ans. To the best of my knowledge neither.

11th Q. Do you know with what they are set to prevent jarring or cracking, or did you ever examine to see?

Ans. I never noticed anything, and never examined them.

12th Q. Are they not set on the inner wall of the coach?

Ans. I cannot state.

13th Q. Had you any knowledge or indication of approaching danger of collision, or that there had been a collision, before the time you heard the noise which you have described?

Ans. No, sir.

14th Q. Was your train that day a heavy or light one?

Ans. Rather light.

R. ROLLS GRANT.

I, Percy Norton, a notary public of the State of Ohio, in and for the county of Clark, do hereby certify that the above-named Frank Woodbridge, David Boyd, John Caskey, John W. Byers, Benjamin J. Gregg, Robert B. Haylor, William Cash, George E. Gregg, Alonzo D. Curtis, Daniel W. Lott, and Ralph Rolls Grant were by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth; that the foregoing depositions by them respectively subscribed were reduced to writing by me, except those of John Caskey and John W. Byers, and they were reduced to writing by W. F. Bevitt, a disinterested per-

173 son, and by said witnesses respectively subscribed in my presence, and were taken at the law office of S. A. Bowman, in the city of Springfield, in said county, on the 19th and 20th days of February, A. D. 1879.

In testimony whereof I have hereunto set my hand and official seal this 21st day of February, A. D. 1879.

PERCY NORTON.

Filed M'ch 3rd, 1879, by express; opened same day by request of Kelly's att'ys.

H. EVERETT.

Depositions of sundry witnesses, taken before me, Percy Norton, within and for said county of Clark an' State of Ohio, by agreement of the parties, at the law office of S. A. Bowman, in the city of Springfield, in said county, on the 21st day of March, A. D. 1879, to be read in evidence on behalf of John S. Farlow, receiver, at the hearing before Homar Everett of the claim of Sylvanus Kelly for damages referred to him as special master commissioner by the circuit court of the United States for the northern district of Ohio, in an action pending therein, wherein John C. Pratt et al., as plaintiff, and the Cincinnati, Sandusky and Cleveland Railroad Company are defendant; present, Joseph Bartlett for Sylvanus Kelly, and S. A. Bowman, esq., for receiver.

ALEXANDER DUNLAP, being duly sworn, deposes and says:

1st Q. Wh t is your name, age, residence, and occupation?

Ans. My name is Alexander Dunlap; age, 64 years; residence,
174 Springfield, Ohio; occupation, physician and surgeon for about 39 years.

2nd Q. Were you present at the amputation of the arm of Sylvanus Kelly, the plaintiff in this action, at Bellefontaine, Ohio, in August, 1877?

Ans. Yes; and I amputated his arm.

3rd Q. Please locate the boundaries of the bruise or blow on his arm, caused by the object which had struck it.

Ans. Not having measured exactly the distance on the arm, the injury was principally in the elbow-joint, extending in the neighborhood of four inches above the joint, and downwards on the forearm a little, quarter distance from the point of the elbow. These distances are not given with certain accuracy, but are an approximation. The soft parts were very much lacerated and torn, and the bones injured or broken. This injury, as described in this answer, is where the force of this blow was received that did it.

4th Q. How often did you visit Mr. Kelly?

Ans. I couldn't tell you now. I think it was twice or three times.

5th Q. Would, in your opinion, the amputation of his arm effect his general health permanently?

Ans. I have no reason to believe it would; as a general rule it does not.

Cross examination:

6th Q. Have you seen Mr. Kelly since he was removed from Bellefontaine after the accident, and have you any knowledge whatever of his general health?

Ans. I don't recol'ect of having seen him, and I have no knowledge of his general health.

7th Q. Did you examine the arm and locate upon it the exact
175 point where the blow was received causing the injury?

Ans. Yes; that is described in my answer to question-in-chief number three (3).

8th Q. What evidence did you discover upon the arm, as to the particular place thereon, the blow causing the injury was received?

Ans. The laceration of the skin and soft parts.

9th Q. To what distance above the point of the elbow was the skin located?

Ans. It would be impossible for me to answer that, fixing the distance precisely, but would say that to the best of my recollection it was between 3 and 4 inches above the point of the elbow.

10th Q. To what distance below the point of the elbow was the skin lacerated?

Ans. I could not state positively.

11th Q. About how far?

Ans. The blue spot, as I have before stated, extended, to the best of my recollection, between four and five inches below the elbow, but the exact part of the laceration of the flesh and skin I could not say how far it did extend down the arm below the elbow. My recollection of this lacerated wound is more fixed upon the upper end of the laceration from the fact that that was the portion of the wound that was to determine me in the place that I was to amputate the arm.

12th Q. Will you answer to the best of your knowledge and recollection, about how far the laceration of the skin and flesh extended down the arm from the point of the elbow?

176 Ans. To the best of my recollection the laceration of the skin and soft parts below the elbow was not quite so great as the wound above. It might have been three inches, it might have been longer for it is impossible for me with my recollection to give an accurate or approximate distance it extended below the elbow.

13th Q. Were the bones of the forearm broken?

Ans. I believe they were.

14th Q. Were the ends protruding through the skin?

Ans. The case had been under the care of a physician for a number of hours before I saw the case. I do not recollect whether the bones were protruding at the time that I uncovered it for the purpose of making an examination. I hardly think they were, but it would have been easy to make them protrude.

15th Q. Did the laceration extend down to the bone?

Ans. I think it did.

16th Q. Did not the bones lacerate the flesh?

Ans. As a resisting force to a blow received upon the soft parts externally crushing the flesh against the bones, they might have assisted in causing the laceration.

17th Q. Was the bone of the arm above the elbow broken?

Ans. I think it was; the bones of the arm will show, however, whether it was or not.

18th Q. Was the laceration that you speak of on the inner or outer portion of the arm?

Ans. The muscles were very much bruised and lacerated all around the arm, but if I recollect, the laceration of the skin was principally on the lower or inner side of the arm.

177 19th Q. From your examination, could and did you determine whether the arm was extended or folded at the time it received the injury?

Ans. From my examination alone I could not determine the position of the arm, but I did determine the position of the arm from my examination of the injury, and from the circumstances under which the injury was received.

20th Q. Was it folded or extended at the time?

Ans. It was folded.

A. DUNLAP.

CHARLES W. DUNLAP, being duly sworn, deposes and says:

1st Q. What is your name, age, residence, and occupation?

Ans. My name is Charles W. Dunlap; age, 39 years; residence, Springfield, Ohio; occupation, physician and surgeon for about ten (10) years.

2nd Q. Were you present at the amputation of the arm of Sylvanus Kelly at Bellefontaine in August, 1877?

Ans. I was.

3rd Q. Did you examine the condition of the arm before the amputation?

Ans. I did, in regard to the treatment.

4th Q. Please state how far the bruise upon the arm extended above and below the point of the elbow and describe it.

Ans. Below the elbow from a casual examination, as it did not much interest me below the elbow it extended in the neighborhood of 4 or 5 inches. I cannot state exactly. The extension of the bruise
178 above the point of the elbow was in the neighborhood of 3 to 3½ inches. The bones were mashed up and the sott parts bruised and lacerated to such an extent that amputation was the only relief.

5th Q. Which part of the arm was bruised the most, the portion above or below the joint of the elbow?

Ans. The portion above.

6th Q. Did you make a second visit to Mr. Kelly after the occasion on which the arm was amputated?

Ans. Yes, sir.

7th Q. How long after?

Ans. It was about a week.

8th Q. On the occasion of this second visit, did Mr. Kelly make any statement as to where his arm was at the time it was injured?

Ans. Yes, sir.

9th Q. What was it?

Ans. He told me his arm was lying in the window.

Cross examination:

10th Q. Whereabouts was Mr. Kelly at the time he made this statement you speak of?

Ans. He was in a room in the hotel at Bellefontaine, right near the railroad.

11th Q. Who was present?

Ans. There was some gentleman; don't know his name; his wife or sister was in the room, but which one I do not know.

12th Q. What was this man doing that you speak of?

Ans. From the way he was acting there, I supposed he was a nurse.

13th Q. Please describe him.

Ans. He was medium size with slight beard, I think; should
179 say he was about 40 years of age; was dressed in dark clothes.

14th Q. Under whose employment was you there as physician?

Ans. I was sent there by the Railroad Company, C. S. & C.

15th Q. Did not Kelly state in that conversation that his elbow was resting on the sill of the window, with his head in his hand, that the jar of the collision threw his arm out of the window and it was crushed?

Ans. No, sir.

C. W. DUNLAP.

I, Percy Norton, a notary public of the State of Ohio, within and for the county of Clark, do hereby certify that the above named Alexander

Dunlap and Charles W. Dunlap were by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth. That the foregoing depositions by them respectively subscribed, were reduced to writing by me, and by said witnesses respectively subscribed in my presence, and were taken at the law office of S. A. Bowman in the city of Springfield, in said county, on the 21st day of March, A. D. 1879.

In testimony whereof, I have hereunto set my hand and official seal, this 21st day of March, A. D. 1879.

PERCY NORTON.

Mrs. KITTIE ALLEN being duly sworn, on oath, testifies and deposes as follows:

180 1st Q. State your name, age, and place of residence.

Ans. Springfield, Ohio; Kittie Allen is my name; age, 27 y'rs.

2nd Q. How long have you resided in Springfield?

Ans. Seven years.

3d Q. What is the occupation of your husband?

Ans. Engineer of the C. S. and C. Railroad.

4th Q. Were you upon the train of the C. S. and C. road on the 23rd of August, 1877, on the occasion when Sylvanus Kelly, passenger on said train, had his arm injured near Bellefontaine, Ohio?

Ans. Yes, sir.

5th Q. Where did you get upon the train?

Ans. At Springfield.

6th Q. Did any member of your family accompany you on the train, and if so who?

Ans. Yes, sir; my little boy, about seven years old.

7th Q. What seat did you occupy in the car with reference to the one in which Mr. Kelly sat?

Ans. Just the one back of him on the same side of the aisle.

8th Q. Which seat did your little boy occupy with reference to the one in which Mr. Kelly sat?

Ans. The one in front of him on the same side.

9th Q. Why did not your little boy occupy the same seat with you?

Ans. I had several bundles lying in the seat with me, that was the reason I had no room for him.

10th Q. Was Mr. Kelly in his seat when you entered the car, or did he come in after you?

Ans. He went in right ahead of me and my husband who helped me into the car.

11th Q. Did your husband accompany you on your journey?

Ans. No, sir.

181 12th Q. Where were you going to?

Ans. To Clyde, Ohio.

13th Q. After you took your seat in the car, just behind Mr. Kelly, did you make any change in the place of your sitting in the car, and if so what?

A. Not any change.

14th Q. Where was your little boy sitting at the time Mr. Kelly was hurt?

Ans. On the seat in front of him.

15th Q. If you observed, when and in what position Mr. Kelly had his arm at the time of the accident?

Ans. He sat up close to the window with his arm out of the window, and his head resting on his arm.

(Witness here shows the position by putting her arm on a table, and shows a projection of the elbow joint folded protruding outside the car about 3 or 4 inches.)

16th Q. Was the window at Mr. Kelly's seat open or closed at the time?

Ans. Open.

17th Q. Did any portion of his arm project outside of the car at the time, and if so what part, the hand or the elbow?

Ans. The elbow.

18th Q. In what part of the arm was his head resting?

Ans. On his hand.

19th Q. How did you come to notice the position in which Mr. Kelly had his arm?

Ans. I noticed him by my little boy sitting in front of him, and I watching him, and by his sitting in that position when we were riding along.

20th Q. What led you to notice the particular position of Mr.
182 Kelly's arm before the accident?

Ans. Because I thought it was careless of him riding with his arm out of the window.

21st Q. How long had he been sitting with his arm in that position before the accident?

A. I am positive that he took that position when he went into the car, and I am positive that he did not move before he was hurt.

22nd Q. After the accident did any one visit you on behalf of Mr. Kelly?

Ans. General Buckland visited me.

23d Q. When?

Ans. I can't tell you just the time, I think it was along last fall, I have forgotten when.

24th Q. Where?

Ans. At Springfield, Ohio, at my home.

Cross-examination:

25th Q. Is your husband at present running a train on the C. S. and C. road as engineer?

Ans. Yes, sir.

26th Q. How long has he been running the train as engineer?

Ans. Seven years next October.

27th Q. Was he running a train as engineer in the employ of the company at the time of this accident?

Ans. Yes, sir.

28th Q. Did you purchase a ticket to Clyde on that trip, or was you passed over the road by the company?

Ans. I had a pass.

29th Q. Have you had a pass ever since from the company to ride upon its cars?

Ans. I have had a pass whenever I wanted to ride over
183 the road ever since my husband worked for the company.

30th Q. In which car of the train did you take your seat at Springfield?

Ans. We were next to the palace car.

31st Q. What position did the car occupy in the train?

Ans. I can't tell you whether the smoking car or the baggage car was ahead of it.

32nd Q. Was it the front, middle, or rear car of the train?

Ans. The palace car was the hind car, and we were next before it.

33rd Q. In what part of the seat did you set down or occupy?

Ans. I set close to the window.

34th Q. How many bundles did you have with you or packages?

Ans. I had a satchel, a box, and a bundle strapped with a shawl strap.

35th Q. Did they occupy the balance of the seat you occupied?

Ans. Yes, sir.

36th Q. Was it because of these packages there was no room for your son in the same seat with you?

Ans. Yes, sir.

37th Q. How near to the window of the car did you sit?

Ans. I sat up close to the window directly back of Mr. Kelly.

38th Q. Did you maintain that position from the time you started from Springfield until the accident to Mr. Kelly at Bellefontaine?

Ans. I could not say that I did. I kept looking around him to see my little boy quite often.

39th Q. Did you occupy the same sitting during all this time?

Ans. Yes, sir, I did; there was no room in the seat for me to change.

40th Q. Had you ever seen Mr. Kelly before you saw him on
184 the train that day?

Ans. No, sir; not that I know of.

41st Q. Was he not an entire stranger to you at the time?

Ans. Yes, sir.

42nd Q. Was the window of the car at which you was sitting closed or opened?

Ans. Opened.

43rd Q. Who sat down first, you or Mr. Kelly, upon entering the car at Springfield?

Ans. He went in directly ahead of us and took his seat first.

44th Q. Which part of the seat did he sit down in?

Ans. He sat close up to the window.

45th Q. Did he change his sitting at any time between Springfield and Bellefontaine?

Ans. I am positive he kept that one position from the time he sat down until he was hurt.

46th Q. How near to the window did he sit?

Ans. He sat right up close to the side of the window, I should judge.

47th Q. Was his body against the inside of the car?

Ans. I could not tell you whether his body was up against the side of the car or not.

48th Q. Was his shoulder against the inside of the car?

Ans. I think his shoulder was right up against the edge of the window.

49th Q. Did he rest his arm in the window when he first took his seat at Springfield?

Ans. Yes, sir.

50th Q. Did he place his head in his hand at the same time?

Ans. Yes, sir.

51st Q. Was he sitting in an erect position, or was he leaning forward?

185 Ans. He was not leaning forward, but sat erect, leaning against the window; his back was against the seat in the corner; I couldn't tell you the exact position of his body; I noticed his arm.

52nd Q. Did he maintain his position from the time he left Springfield until he was hurt at Bellefontaine?

Ans. I am positive that he did not move out of that one position; my impression was that he was asleep.

53rd Q. What is the distance by railroad from Springfield to Bellefontaine?

Ans. That I can't tell you, but I think between thirty and forty miles somewhere.

54th Q. What time did that train leave Springfield that morning?

Ans. I have forgotten just what the time-card was, but I think a little before 12.

55th Q. How long was it running to Bellefontaine?

Ans. That I can't tell you exactly. I should judge about an hour and three-quarters, or somewhere along there.

56th Q. Do you swear that you are positive that during all this time Mr. Kelly never changed from the position you described him as occupying?

Ans. I am positive he took that one position, and kept it until he was hurt.

57th Q. About how long after Kelly took his position in the car was it before it left Springfield?

Ans. Could not tell exactly; but a very few moments.

58th Q. Did he take this position before the car left the depot at Springfield?

Ans. I am positive that he did.

59th Q. At what part of the road was it that the conductor took up the tickets of the passengers of that car?

186 Ans. That I could not tell you exactly; but they generally take them up a little below the round-house.

60th Q. About how far is that from the station at Springfield?

Ans. I believe they call it one mile.

61st Q. Did he take up Kelly's ticket that day?

Ans. That I could not tell; I did not notice whether he had a ticket, or what he had.

62nd Q. Did you see the conductor come to Mr. Kelly for tickets?

Ans. I don't remember of noticing that at all; I presume I was busy getting my own pass.

63rd Q. Were there other persons in the same car other than yourself, your son, and Mr. Kelly?

Ans. Yes, sir; the car was full.

64th Q. Were there other men sitting on the same side of the car that you and Mr. Kelly was sitting?

Ans. I think there were one or two, but am not certain about their being men; but the car was filled with passengers.

65th Q. Can you say there were any men sitting on the same side of the car that Kelly was?

Ans. I remember of one who was sitting on front part of the car on the same side of the car that Mr. Kelly was; he came and spoke to me after Mr. Kelly was hurt, and picked a piece of iron Mr. Kelly had left under the seat. Who this man was I do not know.

66th Q. What was you doing from the time you left Springfield until you arrived at Bellefontaine?

Ans. I was watching my little boy in front of Mr. Kelly, for fear he would raise the window and get his head out and get hurt in same way; I always kept my eyes on him.

187 67th Q. At the time you say you saw Mr. Kelly's arm projecting outside of the car, did you see it from the inside, or the outside of the car?

Ans. I saw it from the inside; I did not have my head outside of the window.

68th Q. Was you sitting down in the seat you say you occupied, at the time you say you saw it?

Ans. Yes, sir.

69th Q. What was you doing, and toward what was your attention attracted, just preceding the collision which caused Mr. Kelly's injury?

Ans. I was looking right forward, and next thing was I heard a sound like timber raking along the side of the car, and the next I saw Mr. Kelly's arm. It looked to me like a piece of timber struck Mr. Kelly's arm; I think I was the first one that took hold of Mr. Kelly.

70th Q. If Mr. Kelly had his arm out of the window, as you say, and you supposed him to be asleep and in danger, as you say, why did you not arouse him and call his attention to it?

Ans. In the first place I think any one traveling capable of taking care of themselves. In the next place I would not have had time; it was in an instant, and probably I would not have had the forethought.

71st Q. When was it that the thought first occurred to you that it was carelessness in Mr. Kelly putting his arm in the window, as you say he did?

Ans. When he first took his position that way I noticed it. (I have traveled a good deal. I always notice if a person has their head
188 or arm out of the window, as I consider it careless to ride in that way.)

(Counsel for Kelly objects to all the foregoing answer after and including the words "I have travelled," &c., and moved that the same be stricken out for the reason that the same is not responsive to the question; which motion is sustained, and the ruling thereon excepted to by counsel of Farlow, receiver.)

72nd Q. Was there not sufficient time between the time you first noticed his arm in this position you speak of and the time of the injury for you to have aroused Mr. Kelly and called his attention to what you say you regarded his carelessness?

Ans. No, sir; it was all done in an instant.

73rd Q. Have you not said that his arm was in that position upon leaving Springfield and so remained until you were near Bellefontaine?

Ans. Yes, sir.

74th Q. Well wasn't there sufficient time to notify him of what you regarded his danger during this interval?

Ans. Certainly there was time.

75th Q. Then why did you not notify him?

Ans. Because I thought it was none of my affairs. I considered he was capable of taking care of himself.

76th Q. Did you consider him capable of taking care of himself when he was asleep, as you supposed?

Ans. I considered that was his lookout, not mine.

77th Q. About how far will you say it was from your head as you sat in the seat to the edge of the window at which Kelly sat?

Ans. I could not tell; I should think not quite a yard; it was about as far as I could reach with my arm, setting up.

189 78th Q. How long previous to the time you saw General Buckland, as you have testified, was it that Mr. Bowman, counsel for the receiver in this action, interviewed you concerning your knowledge of the matter?

Ans. I think it was last fall that I saw General Buckland; I never saw Mr. Bowman before last Friday.

79th Q. Upon the occasion of General Buckland's visiting you, did you not say to him that counsel on the other side had been to see you and talked with you about what you knew of the matter?

Ans. I told him that Mr. Scott, Mr. Bowman's partner, as I now understand, had visited me and talked about the affair.

MRS. KITTIE ALLAN.

APRIL 8TH, 1879. Defendant Farlow introduced witnesses, to wit:

JOSIAH BARNETT, of lawful age, being sworn, on oath testifies as follows:

1st Q. State your name, age, and place of residence and occupation.

Ans. Josiah Barnett; my residence, Clyde, Ohio; age, 51 years; a produce dealer.

2nd Q. Have you recently examined passenger car No. 9, of C. S. and C. Railroad; if so, when and where?

Ans. Yes; at Clyde, yesterday.

3rd Q. Suppose a person sitting in a seat of said car next to the window, and close to it as he can be, window up, and his right arm or elbow out of the window resting on the window sill, could one sitting in
190 the seat next behind facing his back, and sitting next to the window, see whether such person had his arm or elbow out of the window?

Ans. He could.

4th Q. If a person so sitting in the next forward seat be resting his right elbow on the window sill, and his head on his right hand, sitting close as he can to the window, his back against the back of the seat, could a person in seat next behind, sitting next the window, see whether the one so forward had his arm so resting on the window sill?

A. He could.

5th Q. How do you know?

Ans. Well, by a personal trial or test.

Cross-examined:

6th Q. What is the distance from the back of a car seat to the jam of the window forward of it in car No. 9?

Ans. Couldn't tell you exactly.

7th Q. How much higher is the top of the back of the car seat than the sill of the window in car No. 9?

Ans. I cannot tell.

8th Q. How broad is the jam of the window in car No. 9?

Ans. Well, I have none of those measurements, and could not tell exactly.

9th Q. Is it not at least six inches from the inside to the outside edge of the sill of the window?

Ans. Well, I'd be laboring under the same difficulty. I can only give my impression. My impression would be that it is less than six inches. I would think it would not exceed five. I never looked with that view at all.

10th Q. How far apart would two persons be, each sitting in a seat of the car No. 9, one in the rear of the other, their backs
191 against the backs of the seats?

Ans. I would say between two and three feet.

11th Q. How far are the backs of the seats apart, turned the same way?

Ans. I should say three feet; perhaps a little over.

12th Q. How far is the back of the seat from the jam of the window next to it in car No. 9?

Ans. Oh! could not tell exactly. I would say ten inches.

13th Q. Where a person is sitting in a seat, in an upright position, back against the back of the seat, close up in the corner next to the wall of the car, his shoulder against the edge of the jam of the window, his arm resting in the window, with his head resting in his hand, could a person sitting in the seat next behind him, close to the side of the car, see whether that person's arm extended outside of the window, without looking at it from the outside of the car?

Ans. The person behind, that is, a person of any height, now (5 feet 6 inches) could not see the part outside if it did project. By my trial yesterday I could see the arm on the sill, but could not see the portion outside of the car.

14th Q. Can such person see any portion of the arm that rests in the jam of the window?

Ans. He can.

15th Q. When the person is sitting upright in the seat, his back against the back of the seat, close against the wall of the car, and in the corner of the seat, his shoulder against the jam of the window, his arm resting in the window, his head resting in his hand, can you in such case see any portion of the arm that rests in the jam of the win-
192 dow, sitting in the seat behind and close against the wall of the car?

Ans. Well, I would say yes to that question.

16th Q. What portion of the arm can you see under such circumstances?

Ans. Portions of the arm above and below the elbow; portions of the elbow you could not see.

17th Q. Is it not true that the portion of the arm that you can see is that portion not in the jam of the window or not extending outward beyond the inner face of the wall of the car?

18th Q. Where two persons are sitting as heretofore stated, can the person in the rear see the elbow of the person in front?

Ans. In my test yesterday I could not see the elbow.

19th Q. Is it not true that the thickness of the wall of the car, known as the jam of the window, prevents one from seeing the elbow?

Ans. Yes; it's the wall that prevents you from seeing.

Re-examined:

20th Q. Who sat in the forward seat yesterday when you was looking at the car?

Ans. Frank Ramsey.

J. BARNETT.

O. M. MALLEVNEE, being duly sworn, testified as follows:

My name is O. M. Mallevnee; age, 44 years; residence, Clyde, Ohio; and occupation, farmer and dealer in marble and stone.

1st Q. Have you examined passenger car No. 9, C., S. & C. R. R.; if so, when and where?

Ans. Yes; yesterday, at Clyde, Ohio.

193 2nd Q. Suppose a person, sitting in a seat of said car next the window, close up to the window as he can, with window up, and his right arm or elbow out the window, and resting on the window sill, can one sitting in seat next behind facing his back and next the window see whether such person has his arm or elbow out the window?

Ans. He can, as we tested yesterday, with Frank Ramsey sitting in front seat.

3rd Q. If person sitting in next forward seat be resting his head on his right hand, sitting close as he can to window, his back against back of seat, could a person in the seat next behind, sitting next the window, see whether the one so forward had his arm so resting on window sill?

Ans. Yes, sir.

4th Q. How do you know these things?

Ans. By personal examination yesterday.

Cross-examination by counsel for Kelly:

5th Q. When a person is sitting in a seat of passenger coach No. 9, in an upright position next the window, with the window open, with their back against the back of their seat, their right shoulder resting against the edge of the jam of the window, their right arm resting in the window, with their head resting in their right hand, can a person sitting in seat next in rear of such person, facing their back, and close against the side of the car, see whether the arm of such person projects beyond the outside of the car?

Ans. No, sir.

194 Q. In your test of yesterday, could you see the entire arm?

Ans. By one test we could; by the other we could not. In one test Ramsey put his arm outside of the window sill, and we could not see all the arm; the other test was when he put his arm on the window sill; then we could see it all.

Q. When two persons are sitting as described in first question on cross-examination, could the person in the rear see the entire arm of the person in front of him?

Ans. I think not.

O. M. MALLEVNEE.

FRANK RAMSEY, being duly sworn, testifies as follows:

My name is Frank Ramsey; age, 47 years; residence, Clyde, Ohio; occupation, dealer in stock and real estate.

1st Q. Have you examined passenger car No. 9, C., S. & C. Railroad; if so, when and where?

Ans. Yesterday, at Clyde.

2nd Q. Suppose a person sitting in a seat of said car, next the window, close up to the window as he can, with window up, and his right arm or elbow out the window and resting on the window sill, can one sitting in seat next behind, facing his back, and next the window, see whether such person has his arm or elbow out the window?

Ans. No; I don't think he could; could see it on the sill; but not that part out of the window.

3rd Q. If person sitting in next forward seat be resting his head on his right hand, sitting close as he can to window, his back
195 against back of seat, could a person in the seat next behind, sitting next the window, see whether the one so forward had his arm so resting on window sill?

Ans. My test was yesterday that he could; I sat next the window then.

Q. How do you know this?

Ans.

Q. Could you see whether it was out of the car window or not?

Ans. No; I don't think that I could.

Cross-examined:

Q. Could you see the entire arm of the person sitting as supposed above?

Ans. Could not.

F. RAMSEY.

Also came CHAS. L. DEWEY, who, being sworn, testified as follows:

1st Q. State your name, age, residence, and occupation.

Ans. My name, Charles L. Dewey; age, 29 years; occupation, dealer in trees; residence, Clyde, Ohio.

2nd Q. Have you examined passenger car No. 9, C., S. & C. R. R.; if so, when?

Ans. I have, yesterday at Clyde.

3rd Q. Suppose a person, sitting in a seat of said car next the window, close up to window he can, with the window up, and his right arm or elbow out the window and resting on the window sill, can one sitting in seat next behind facing his back and next the window, see
196 whether such person has his arm or elbow out the window?

Ans. If he sits in an upright position, I should say he could, if he had his arm——

Q. If person sitting in next forward seat be resting his head on his right hand, sitting close as he can to window, his back against back of car seat, could a person in seat next behind, sitting next the window, see whether the one so forward had his arm so resting on window-sill?

Ans. If he set in a perfectly upright position, he could see that his arm was outside of the inner face of the car.

Q. How do you know that?

A. From personal examination, yesterday.

Q. Who sat in the forward seat yesterday?

A. Frank Ramsey. Frank is taller than Sylvanus Kelly.

Cross-examination:

Q. Where a person is sitting in a seat of car No. 9, in an upright position, next the window, with the window open, with their back against the back of the seat, their right shoulder resting against the edge of the jam of the window, their right arm resting in the window, their head resting in their right hand, can a person sitting in seat next in rear of such person, close to the wall of the coach, facing the back of such person, see whether any portion of the arm of such person projects beyond the outside of the car?

Ans. No, sir; he could not.

CHAS. L. DEWEY.

197 DEWIT C. BROWN being duly sworn says:

My age is 52; am general manager of C. S. & C. R. R.; residence, Sandusky, Ohio.

Q. Have you recently examined passenger car No. 9 of said C. S. and C. R. R.?

Ans. Yes, sir.

Q. Do you know Sylvanus Kelly, complainant?

A. I have seen him in the room here.

Q. If person of Kelly's size, sitting in seat of said car, next window, his right arm either resting on or across the window sill, could a person sitting next behind him, and next the window, see whether such forward person had his arm so on or across window sill?

Ans. He could.

Q. State further and fully all you know upon this matter.

Ans. I examined the coach yesterday, at Clyde, and saw two or three different gentlemen take the position named, and in every instance there was no difficulty in seeing between his head and his shoulder, whether so much of his arm as was out of sight behind the jam of the window would cause his elbow to project out of the window, or not. It would be impossible for him to sit in a position to prevent the person behind from seeing this.

Cross-examination:

Q. When a person is sitting in the seat of passenger coach No. 9, in an upright position next the window, with the window open,
198 with their back against the back of their seat, close up in the corner of the seat, against the wall of the car, his right shoulder resting against the edge of the jam of the window, his right arm resting in the window, his head resting in the hand of his right arm, can a person sitting in the seat next in the rear of such person, close against the wall of the car, facing the back of such person, see whether any portion of sheh person's arm projected beyond the outside of the car?

Ans. No, sir.

DEWITT C. BROWN.

The aforenamed Kittie Allen, Josiah Barnett, O. M. Mallevnee, Frank Ramsay, Chas. L. Dewey, and Dewitt C. Brown, were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and their respective depositions written by me and subscribed by them, in my presence.

April 8th, 1879.

HOMER EVERETT,
Master Commissioner.

199 And afterwards, to wit, on the 28th day of April, 1879, the following report was filed, viz:

Report of Homer Everett.

In the circuit court of the United States for the northern district of Ohio.

JOHN C. PRATT ET AL.
vs.
THE CINCINNATI, SANDUSKY AND CLEVELAND R. R. Co. et al.

In the matter of Sylvanus Kelly vs. John S. Farlow, receiver, referred to Homer Everett, as special master commissioner, &c.

STATE OF OHIO,
Sandusky County, ss:

I, Homer Everett, do solemnly swear that I will support the Constitution of the United States, and that to the best of my ability I will faithfully and impartially discharge the duties of special master commissioner in all matters referred to me by order of said court in the above-entitled action.

HOMER EVERETT.

Sworn to before me and subscribed in my presence by Homer Everett this 11th day of February, A. D. 1879.

[SEAL.] JAMES H. FOWLER,
Notary Public.

200 Circuit court for the northern district of Ohio.

JOHN C. PRATT ET AL.
vs.
CINCINNATI, SANDUSKY & CLEVELAND R. R. Co. et al. } No. 3353.

Master commissioner's report on the issues between Sylvanus Kelly, complainant, and John S. Farlow, receiver, defendant, in the above-entitled cause.

To the honorable Martin Welker, judge of the circuit court of the United States for the northern district of Ohio:

The undersigned, a special master commissioner, appointed by you to hear testimony and report my findings on the issues joined between the said Sylvanus Kelly and the said John S. Farlow, receiver, and whether said Farlow, receiver, is liable for the injuries complained of, and if so, the amount of said Kelly's compensation, respectfully submits the following report:

After having taken the oath, as required by law, and after having given due notice, in writing, to the parties, the parties met pursuant to the notice, at office of Everett and Fowler, in the city of Fremont, in the county of Sandusky, and State of Ohio, on Tuesday, the 11th day of February, A. D. 1879, at 10 o'clock a. m., and therefore the said Kelly filed the depositions of A. C. Jennings, Julia A. Jennings, W. H. Cretcher, Joseph Comer, and Glaucus Bascafan.

201 Thereupon, on application of said John S. Farlow, the further hearing is adjourned until February 13th, 1879, at 10 o'clock a. m.

TUESDAY, *February 13th*, 1879.

The parties and their respective counsel appeared, and David June and said Sylvanus Kelly were severally sworn and testified on behalf of said Kelly, and their several depositions reduced to writing by me and signed by them respectively, which depositions are herewith returned, and thereupon further hearing was, by consent of parties, adjourned to the 17th day of March next, at 10 o'clock a. m.

MARCH 17TH, 1879.

Parties and counsel met pursuant to adjournment, and the said John S. Farlow, receiver, filed the depositions of Frank Woodbridge, David Boyd, John Caskey, John W. Byers, Benjamin J. Gregg, Robert B. Haylor, William Cash, George E. Gregg, Alonzo D. Curtis, Daniel W. Lott, Ralph Rollo Grant, A. Dunlapp, and Charles W. Dunlapp, and, by consent of parties, further hearing adjourned to March 25th, 1879, at 10 o'clock a. m.

MARCH 24TH, 1879.

Parties met, and Farlow took testimony of Mrs. Kittie Allen.

MARCH 25TH, 1879.

Parties and counsel met pursuant to adjournment, and no testimony being offered by either party, by consent adjourned hearing to March 31st, 1879, at 10 o'clock a. m.

MARCH 31ST, 1879.

The parties and their counsel met pursuant to adjournment. The said Kelly produced, as witnesses, Isaac N. Halter and John B. Rice, who were duly sworn by me, and their depositions severally by
202 me reduced to writing *by me writing by me*, subscribed by them, and herewith returned.

Thereupon I adjourned further hearing to the 7th day of April, 1879, at 10 o'clock a. m.

MONDAY, *April 7th*, 1879.

Parties and their counsel met pursuant to adjournment, and complainant Kelly produced, as witnesses, John V. Berry, David June, and B. F. Evans, whose several depositions, under oath, were reduced to writing by me, signed by them respectively, and are herewith returned. Adjourned until to-morrow morning, 10 o'clock a m.

TUESDAY, *April 8th*, 1879.

Parties and counsel met pursuant to adjournment. and defendant produced witnesses, to wit, Josiah Barnett, O. M. Mallevnee, Frank Ramsay, Charles L. Dewey, and De Witt C. Brown, who, being sworn, testified, and their depositions reduced to writing by me severally, signed by them respectively, are herewith returned.

Thereupon complainant Kelly called and examined Sarah Kelly, whose testimony under oath was reduced to writing by me, and is herewith returned, and the parties rested.

Thereupon came the said Sylvanus Kelly and filed his written motion for leave to withdraw certain testimony introduced by him, which motion is in the words and figures following, to wit:

Now comes the said Sylvanus Kelly and moves the master to withdraw from the consideration of this case all testimony offered by said Kelly in relation to what men of ordinary care and prudence do while riding in railroad passenger cars with windows open, with regard to resting their arms on the sill or base of the windows while the cars
203 are in motion, and that the same may be stricken out.

BUCKLAND AND BARTLETT,
Att'ys for Kelly.

And thereupon I granted the motion, and all the testimony on that subject mentioned in the motion is left out of consideration in the findings herewith reported. To the filing of said motion, and the ruling and decision of the commissioner thereon, the counsel for said Farlow, receiver, excepts on the ground that having obtained the ruling of the master admitting said evidence, and having introduced same, it is not proper that their said motion should be sustained.

Thereupon counsel for the parties, namely, General R. P. Buckland and Col. J. B. Bartlett for Kelly, and John M. Lemmon and S. A. Bowman for said Farlow, receiver, made their arguments, produced their authorities, and submitted the case.

And now, in consideration of all said testimony, arguments, and authorities, I find:

1st. That said John S. Farlow is receiver of the said Cincinnati, Sandusky and Cleveland Railroad Company, and as such had in his possession and control said railroad and its property and franchises, and was operating said road on and before the 23rd day of August, 1877.

2nd. That said railroad extends from Dayton to Sandusky, in the State of Ohio, and passes through the city of Springfield and town of Bellefontaine, in Logan County, in said State, which places are stations on said road, and that passenger cars stop and pass each other at Bellefontaine.

204 3rd. That there is side track of said road, about one thousand feet in length, immediately south of Bellefontaine, with a switch at each end, uniting the side track and the main track.

4th. That the side track has a descending grade from north to south of about four feet in the whole distance of one thousand.

5th. That on the morning of the 23rd day of August, 1877, three freight-cars, commonly called box-cars, were standing on the side track, two of them near the north switch, and one about one hundred and thirty-five feet from the south switch.

6th. That complainant, Sylvanus Kelly, on the 23rd day of August, 1877, in the forenoon, having regularly purchased a first-class passenger-ticket, entitling him to ride on said railroad from Springfield to Clyde, Ohio, entered a passenger car thereof at Springfield, and took his seat near an open window about midway of the car.

7th. That said Kelly, shortly before the train in which he rode reached the south end of the side track, had a severe headache, and placed his right elbow on the sill or base of the open window of the coach, and rested his head on his right hand.

8th. The train on which Kelly rode is denominated train No. 6, and was to pass train No. 5, which was that day going south, at Bellefontaine, about noon.

9th. Train No. 5 arrived at the north end of the side track about twenty minutes before train No. 6 arrived at the south end of it.

205 10th. Train No. 5 was switched from the main track and upon the side track at the north end, and, to make room for itself, pushed the two freight cars southward, putting them in motion toward the south end of the side track on the down grade; that the brakes on these freight-cars were neglected and unattended, and the impulse given to them by train No. 5 caused these freight-cars to move the single freight-car standing near the south end of the side track to a point so near the main track that train No. 6 could not pass without contact, and this freight-car remained in this position from five to ten minutes before train No. 6 arrived at the point.

11th. While the freight car was in this position train No. 6 approached at more than ordinary speed from the south, and the forward right-hand corner of the coach Kelly was in struck the freight car and jarred Kelly's elbow from the window sill outward over the window-sill and outside of the coach, bringing his forearm in contact with the freight car, while his arm above the elbow was pressed against the jam or side of the window.

12th. That train No. 6 being in motion, Kelly's right arm was crushed and broken below and above the elbow in such a manner as to require amputation near the shoulder, which was performed a few hours after the injury by a surgeon in the employ of Farlow, receiver.

206 13th. That at the time of the injury Kelly was about forty years of age, of usually good health, a first-class machinist, and was earning and in receipt of wages at the rate of two dollars and fifty cents

a day; that he was sick about three months from the effects of the injury, and was also permanently disabled from work at his trade, or gaining a livelihood for himself and family by manual labor.

On negligence in management of the railroad.

14th. I find that when said train No. 5 pushed the two freight-cars near the north end of the side track southward, on the down grade, there was negligence in not controlling their motion so as to prevent them from forcing the other freight-car down toward the south switch.

15th. That proper care and skill required that said train No. 6 should, under the circumstances, have been kept under control so that the engineer could have stopped it before coming in contact with the freight car, there being a straight track of nineteen hundred feet south of the point of collision, in open daylight.

On the issue of Kelly's negligence.

16th. The testimony is somewhat conflicting as to whether his elbow projected beyond the outside of the car before the shock of the collision. After weighing the evidence on the point, I find that his elbow did not so project until it was thrown outside by the jar of the
207 car when struck, and that it was thrown by the jar of the collision, and was not voluntarily placed in such position.

17th. Whether resting his elbow on the sill or base of the window by Kelly was an act of negligence in itself is a question of some difficulty. The authorities are numerous on both sides. The question has been differently decided in different State courts. Ohio does not afford an adjudication of it. After reviewing the confusion and conflict of these decisions of State courts on the question, I have, as authority, adopted the views expressed in the case of Curtis vs. The Central Railway, reported in McLan's Circuit Court Reports, vol. 6, page 401, and those State courts which follow that decision, and find that such position in the cars was not of itself negligence on the part of Kelly.

18th. I find that said Farlow, receiver, is liable to said Kelly for the injury complained of. And,

19th. I find that said Kelly should, as compensation for the injuries complained of, receive from said Farlow, receiver, the sum of nine thousand ($9,000) dollars.

All which is respectfully submitted. April 26th, 1879.

HOMER EVERETT,
Special Master Cammissioner.

208 *Cost bill.*

Circuit court, northern district of Ohio.

J. C. PRATT ET AL., PL'T'FS,
vs.
CIN., SANDUSKY & CLEVELAND R. R. CO., d'f'ts. } No. 3353.

Costs on reference before Homer Everett, master commissioner, in trying issue between Sylvanus Kelly, complainant, and John S. Farlow, receiver, defendant:

Complainant Kelly's depositions and witnesses..... 24 58

Defendant Farlow, receiver, do. 37 65
Master commissioner, 25 days spent notifying parties, hearing and writing testimony, hearing arguments, examining and considering authorities, and making and transmitting report..... 500 00

HOMER EVERETT,
Master Commissioner.

Filed April 28th, 1879.

209 And afterwards, to wit, on the 26th day of May, 1879, the following exceptions were filed, viz:

Exceptions to report of Homer Everett.

In the circuit court of the United States for the northern district of Ohio.

JOHN C. PRATT ET AL.
against
CINCINNATI, SANDUSKY AND CLEVELAND R. R. Co. et al.

In the matter of the petition of Sylvanus Kelly vs. John S. Farlow, receiver, referred to Homer Everett as special master commissioner.

Exceptions taken severally by the complainants, by the Cincinnati, Sandusky and Cleveland Railroad Company, and by John S. Farlow, receiver of said railroad company, and by each of them to the report of Homer Everett, made in this cause, and bearing date the 26th day of April, A. D. 1879, and filed April 28th, 1879.

First. For that the said master erroneously allowed the said Kelly to offer evidence as to the practice of passengers while riding in the passenger cars of certain railroads other than the railroad of the said Farlow, receiver, to rest their arms on the sill of the open windows
210 while the cars were in motion, against the exceptions of the said Farlow, receiver, and afterwards in allowing the said testimony to be withdrawn from said cause by the counsel of the said Kelly without any concessions on their part that the same was incompetent.

Second. For that the said master, in his said report, has certified, in the seventh finding thereof, that the said Sylvanus Kelly, shortly before the train in which he rode reached the south end of the side track, placed his right elbow on the sill or base of the open window of the coach, whereas the weight of the testimony of said cause shows that the said Kelly placed his right elbow in the open window of the said coach so as to allow the same carelessly to project outside thereof a long time before the said train reached the south end of said side track, and carelessly permitted his right elbow to project outside of the said open window at the time of said accident, and for a long time prior thereto.

Third. For that the said master, in the tenth finding of his said report, has certified that a freight car standing near the south end of side track was moved to a point so near the main track that the train upon which Kelly rode could not pass without contact, by the act of those in charge of train No. 5 in putting in motion two other freight cars on said side track and neglecting the brakes thereof, whereas the weight of the testimony in said cause shows that the said freight car was moved so

near the main track that the train on which Kelly rode could not
211 pass without contact, a few minutes before the arrival of said train on which Kelly rode, by the act of some unauthorized persons, and without the knowledge of or neglect of any of the employees of the said receiver.

Fourth. For that the said master, in the eleventh finding of his said report, has certified that the train upon which Kelly rode approached said standing car at more than ordinary speed, and that in the contact of the train with it the elbow of Kelly was jarred from the window-sill outward over the window-sill and outside of the coach so as to bring his forearm in contact with the freight-car, whereas the said testimony shows that the said train approached said side track at ordinary and usual speed, and that the elbow of said Kelly was, at the time said train approached said side track and at the time it came in contact with said standing car, and for a long time had been, by reason of the carelessness of the said Kelly, projecting over the window sill and outside of the said coach, so that the arm of the said Kelly was pressed against the jam side of the window by reason of his own carelessness, and not in the manner set forth and stated by the said master in the eleventh finding of his said report.

Fifth. For that the said master, in his thirteenth finding of said report, has certified that the said Kelly was permanently disabled from gaining a livelihood for himself and family by manual labor by
212 reason of said accident, whereas the *the* testimony in said action shows that the said Kelly was not otherwise permanently injured than by the loss of his right arm above the elbow.

Sixth. For that the said master in his said report, in the fourteenth finding thereof, has certified that there was negligence on the part of the employees of said receiver in not controlling the motion of the two freight cars near the north end of said side track, so as to prevent them from forcing the other freight car down towards the south end of said side track, whereas the testimony in said cause establishes that no such negligence was committed by the said John S. Farlow, receiver, or his agents or employees.

Seventh. For that the said master in his said report, in the fifteenth finding thereof, has stated that proper care and skill required that the said train, upon which the said Kelly rode, should, under the circumstances, have been kept under control, so that the engineer could have stopped it before coming in contact with said freight car, whereas the testimony in said cause establishes that the said train was run with proper care and skill by those in charge of it at the time of said accident, andthat the said train could not, with proper care and skill, have been stopped before it came in contact with said standing car.

Eighth. For that the said master in his said report, in the sixteenth finding thereof, has erred in finding that the elbow of said Kelly did not project beyond the car, but that it was thrown outside by the
213 jar of the car when struck, whereas the weight of the testimony in said cause establishes that the said Kelly voluntarily placed his elbow in the open window of said car, so that it projected beyond the outside of the car, and that the said Kelly would have received no injury if he had not voluntarily, before the accident, placed and retained his arm in the window, so as to project beyond the outside of the coach.

Ninth. For that the said master in his said report, in the seventeenth finding thereof, has erred in holding that it was not negligence on the part of the said Kelly to place his elbow on the sill or base of the open

window of said car instead of upon the rest, which the testimony shows was provided in the seat in which Kelly sat, for the support of his arm.

Tenth. For that the said master in his said report, in the eighteenth finding thereof, has erred in finding that the said Farlow, receiver, is liable to said Kelly in the injury complained of, because the said finding is against the evidence and against the weight thereof, and against the law.

Eleventh. For that the said master in his said report, in the nineteenth finding thereof, has certified that the said Kelly should receive, as compensation or the injury complained of, the sum of nine thousand ($9,000) dollars, because the said amount so found is improper and excessive, and is against the evidence and the weight thereof.

214 Twelfth. For that the said master, in his said report, erred in finding in favor of the said Sylvanus Kelly, whereas, on the law and evidence, the finding of said master should have been in favor of John S. Farlow, receiver.

In all which particulars the said defendants, The Cincinnati, Sandusky and Cleveland Railroad Company and John S. Farlow, receiver, excepts to said report, and appeals therefrom to the judgment of the court.

By R. P. RANNEY AND
S. A. BOWMAN,
Solicitor and Counsel for Exceptors.

And afterwards, to wit, at the April term, on September 30th, 1879, the following proceedings were had:

United States circuit court for the northern district of Ohio.

JOHN C. PRATT ET AL.
vs.
THE CINCINNATI, SANDUSKY AND CLEVELAND R. R. Co. et al. } No. 3353. In chancery.

And now came the said parties by their attorneys, and thereupon the motion of the said John S. Farlow, receiver in this action, to set aside the report of Homer Everett, master commissioner of this court, heretofore made in this action upon the issue between Sylvanus Kelly, complainants, and the said John S. Farlow, receiver in the above-en-

215 titled cause, heretofore awarded by the court here, came on to be heard, and was argued by counsel. On consideration whereof, the court do find that the sum of nine thousand ($9,000) dollars, which said master, in the 19th paragraph of his said report, finds, as the amount that the said Sylvanus Kelly should receive from the said John S. Farlow, receiver, as his compensation for the injuries complained of, is excessive, and do therefore sustain the said motion of the said Farlow, receiver, as to the matters and things set forth and contained in the said 19 paragraph of said master's report, as therein numbered and stated, and order that as much of said master's report as is contained in the 19 paragraphs thereof be, and the same is hereby, vacated and set aside. The court do overrule the motion of the said John S. Farlow, receiver, as to all other matters and things set forth and contained in the master's said report, and order that the said report, and the several matters and things therein contained, and not by this decree vacated and set aside, as aforesaid, do stand ratified and confirmed.

court thereupon find the sum of five thousand and one ($5,001) dollars to be a full, fair, and just compensation to the said Sylvanus Kelly for his injuries by him complained of herein, and that he is entitled to receive the said sum from the said John S. Farlow, receiver.

216 It is further ordered, that the said John S. Farlow, receiver, pay to the said Sylvanus Kelly the said sum of five thousand and one (5,001) dollars, together with interest thereon from this date (Sept. 25th, 1879) until paid, and the costs and master's fees aforesaid, out of any moneys which are in or may come to the hands, control, or possession of him, the said John S. Farlow, as such receiver, said master's fee being hereby fixed at two hundred dollars.

Whereupon comes the complainants, John C. Platt and W. F. Hart, by their solicitors, and give notice of their intention to appeal this cause to the next term of the Supreme Court of the United States, and this court refuses to allow such appeal.

Petition.

To the honorable Noah H. Swayne, justice of the Supreme Court of the United States.

JOHN C. PRATT AND WILLIAM T. HART
against
THE CINCINNATI, SANDUSKY & CLEVELAND R. R. Co. et al.

The appeal of John S. Farlow, receiver of the Cincinnati, San-
217 dusky and Cleveland Railroad Company, duly appointed in the above cause, the appellant respectfully showeth:

That, upon the first day of May, A. D. 1877, the above named complainants filed their bill in the circuit court of the United States for the northern district of Ohio, against the Cincinnati, Sandusky and Cleveland Railroad Company, praying, among other things, for a decree of sale of the said railroad, and for the appointment of a receiver to run and operate the same pending said suit.

That such proceedings were had in said cause that, upon the fifteenth day of May, A. D. 1877, the appellant, John S. Farlow, was appointed receiver of said railroad, with authority to run and operate the same, with the usual powers granted receivers in such cases, and entered upon his duties as such receiver.

That, upon the sixteenth day of September, A. D. 1878, one Sylvanus Kelly filed in said cause a petition against the appellant, setting forth that he had been injured while riding as a passenger upon one of the trains of said railroad, so run and operated by said receiver, and that he had sustained damages by reason of said injuries in the sum of nine thousand dollars, and praying an order that the said receiver should be decreed to pay him said sum as compensation for said injuries.

The said receiver and these complainants answered, denying the right of said Sylvanus Kelly to recover compensation for said injuries.

218 The issue made by said petition and answer was by said circuit court, on the 3rd day of January, A. D. 1879, referred to Homer Everett, esq., a special master, to take testimony and report upon the claim of said Sylvanus Kelly, and on the twenty-eighth day of April, A. D. 1879, said special master filed his report, with the testimony taken before him in said court, in favor of said Sylvanus Kelly, and awarding him nine thousand ($9,000) dollars, as compensation for said injuries.

That, on the 26th day of May, A. D. 1879, the complainants and this appellant each filed exceptions to said report, which were overruled by said court, except as to the amount of said finding.

That, on the thirtieth day of September, A. D. 1879, at the April term of said circuit court, a final decree was made and pronounced in said cause, wherein it was, in substance, adjudged and decreed that the said report be confirmed, except as to the amount found in favor of said Sylvanus Kelly, and that the said Sylvanus Kelly be awarded, as compensation for said injuries, the sum of five thousand and one ($5,001) dollars, and that the said receiver pay to the said Sylvanus Kelly said sum of five thousand and one ($5,001) dollars, with interest from the twenty-fifth day of September, 1879, and the costs of said suit, out of any monies which are or may come to the hands, control, or possession of this appellant.

Wherefore this appellant appeals from the whole of said decree of said circuit court of the United States, and respectfully prays
219 that the decree of the said circuit court, and the petition, answer, pleadings, depositions, evidence, and proceedings in said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court, and every part thereof, may be reversed, and a decree made dismissing said petition with costs, or such other decree as to the said Supreme Court shall seem just.

S. A. BOWMAN,
Complainants' Solicitors.

Appeal allowed.
January 23rd, 1880.

A. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

Filed Jan. 31st, 1880.

220 Know all men by these presents, that we, John S. Farlow, receiver of the Cincinnati, Sandusky and Cleveland Railroad Company, and J. L. Moore, of Sandusky, Ohio, are held and firmly bound unto Sylvanus Kelley in the full and just sum of one thousand (1,000) dollars, to be paid to the said Sylvanus Kelly, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this nineteenth day of January, in the year of our Lord one thousand eight hundred and eighty.

Whereas lately, at the April term, A. D. 1879, of the circuit court of the United States for the northern district of Ohio, in a suit depending in said court between John C. Pratt and William T. Hart and the Cincinnati, Sandusky and Cleveland Railroad Company, a decree for the sum of five thousand and one (5,001) dollars in favor of Sylvanus Kelly was rendered against John S. Farlow, receiver of the said the Cincinnati, Sandusky and Cleveland Railroad Company, duly appointed in said suit, and the said John S. Farlow, receiver as aforesaid, having obtained an allowance for an appeal and filed a copy thereof in the clerk's office of the said court to reverse the said decree in the aforesaid suit, and a citation directed to the said Sylvanus Kelly citing and admonishing to

be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such, that if the said John S. Farlow, receiver of the Cincinnati, Sandusky and Cleveland Railroad Company, shall prosecute said appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) JOHN S. FARLOW, [L. S.]
Receiver of Cincinnati, Sandusky and Cleveland Railroad Company.
J. L. MOORE. [L. S.]

Approved by—

N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

Sealed and delivered in presence of—
As to both signatures,
D. W. C. REM.

221 The United States of America to Sylvanus Kelly, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the northern district of Ohio, wherein John S. Farlow, receiver of the Cincinnati, Sandusky and Cleveland Railroad Company, is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant as in the said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Noah H. Swayne, associate justice of the Supreme Court of the United States, this twenty-third day of January, in the year of our Lord one thousand eight hundred and eighty.

N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

On this thirty-first day of January, in the year of our Lord one thousand eight hundred and eighty, personally appeared Augustus N. Summers before me, the subscriber, a notary public in and for the county of Clark, State of Ohio, and makes oath that he delivered a true copy of the within citation to R. P. Buckland, esquire, the attorney of record for the appellee in the within mentioned cause.

AUGUSTUS N. SUMMERS.

Sworn to and subscribed the thirty-first day of January, A. D. 1880.

F. W. WILLISS,
Notary Public.

Filed Jan'y 31st, 1880.

A. J. RICKS, *Clerk.*

222 UNITED STATES OF AMERICA,
Eastern Division Northern District of Ohio:

I, Augustus J. Ricks, clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to be a true,

correct, and complete transcript of the record of all the proceedings had in said court in the cause wherein Sylvanus Kelly, by leave of court, became complainant, and John S. Farlow, receiver of the Cincinnati, Sandusky and Cleveland Railroad Company, became defendant, in the issues joined in that suit, prosecuted as part of, and ancillary to, the original cause, wherein John C. Pratt is complainant and the Cincinnati, Sandusky and Cleveland Railroad Company and the Sandusky City and Indiana Railroad Company are defendants, with full and correct copy of the original bill, subpœna, and order appointing receiver in said original case, as the same appears from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in the city of Cleveland, in said district, this 1st day of April, A. D. 1880, and of the 104th year of the Independence of the United States of America.

[SEAL.] AUGUSTUS J. RICKS,
Clerk.

(Indorsement on cover:) No. 795. John S. Farlow, receiver of the Cincinnati, Sandusky and Cleveland Railroad Company, appellant, vs. Sylvanus Kelly. N. Ohio C. C. U. S. Filed 21st May, 1880.